TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 276

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, D/B/A R. S. RAINWATER & SONS, AND CITIZENS NATIONAL BANK, WALNUT RIDGE, ARKANSAS, PETITIONERS,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 15, 1957

CERTIORARI GRANTED OCTOBER 14, 1957

SUPREME COURT OF THE UNITED STATES

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

No. J-924

Civil

UNITED STATES OF AMERICA, Plaintiff,

v.

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, D/B/A R. S. RAINWATER & SONS, Defendant.

COMPLAINT—Filed November 23, 1955

1. This is a civil action brought by the United States of America as plaintiff under the provisions of Section 3490-3492, inclusive, and Section 5438 of the Revised Statutes (31 U.S.C. 231-233) of which this court has jurisdiction under Section 3491 of the Revised Statutes, as amended (31 U.S.C. 231-232).

2. The defendant, R. S. Rainwater, Sr., is a resident of Walnut Ridge, Arkansas, within the jurisdiction of this court, and is and was at all times mentioned herein a partner in the firm of R. S. Rainwater & Sons.

3. The defendant, Sloan Rainwater, Jr., is a resident of Walnut Ridge, Arkansas within the jurisdiction of this court, and is and was at all times mentioned herein a partner in the firm of R. S. Rainwater & Sons.

[fol. 2] 4. The defendant, William Rainwater, is a resident of Walnut Ridge, Arkansas, within the jurisdiction of this court, and is and was at all times mentioned herein a partner in the firm of R. S. Rainwater & Sons.

5. R. S. Rainwater & Sons is and was at all times mentioned herein a partnership composed of R. S. Rainwater, Sr., Sloan Rainwater, Jr., and William Rainwater, engaged

in the business of operating cotton gins at Bay, Arkansas, and other places within the jurisdiction of this court and in the purchase and sale of cotton for its own account. During the period involved in this action, R. S. Rainwater & Sons was an approved lending agency under the 1949 Cotton Loan Program of the Commodity Credit Corporation more particularly described below.

6. None of the defendants is, nor at any time mentioned was, in the Military or Naval forces of the United States or in the Militia called into or actually employed in the services of the United States.

7. Commodity Credit Corporation is an agency and instrumentality of the United States within the Department of Agriculture. All the employes of Commodity Credit Corporation are and were at all times mentioned herein persons in the civil service of the United States. The officials of Commodity Credit Corporation are and were at all times mentioned herein officers in the civil service of the United States.

8. On June 30, 1949 Commodity Credit Corporation issued its 1949 Cotton Bulletin I and duly published the same in 14 F. R. 3723. A true and correct copy annexed hereto as a part hereof contains regulations for the 1949 Cotton Loan Program under which loans were made available to producers of cotton upon 1949 crop cotton produced by them as authorized and directed by Section 1 [fol. 3] of the Agricultural Act of 1948 (7 U.S.C. 1282) and the Commodity Credit Corporation Charter Act (62 Stat. 1070, 15 U.S.C. 714).

9. The 1949 Cotton Bulletin 1 limited loans to "eligible cotton" and "eligible producers." "Eligible producer" was defined as any person producing cotton in 1949 in the capacity of landowner, landlord, tenant or sharecropper. "Eligible cotton" was defined as cotton which had been produced by the person tendering it for a loan. Loans could be made only to actual producers on the security of their own cotton owned by them at the time of the loan. Cotton which was bought from a producer was not eligible for a loan to the buyer. The Cotton Bulletin re-

quired a producer desiring a loan on his cotton to tender a duly executed 1949 Cotton Producer's Note and Loan Agreement (hereinafter referred to as a "note") known as Cotton Form A, a true and correct copy of a form of which is annexed hereto as a part hereof, listing the warehouse receipt numbers and description of the cotton and pledging the warehouse receipts representing the cotton as security for the loan.

10. Each note contained representations and warranties that the named maker-producer had produced the cotton; that he had the legal right to pledge the cotton as collateral security for the loan; that the benefits of the loan would accrue solely to him and any tenants or sharecropper having an interest in the cotton; that the benefits of the loan had not been transferred to any other party by way of assignment, sale or option; and that he was eligible for a loan on the cotton in accordance with the terms of the 1949 Cotton Loan Bulletin 1.

11. During the period involved in this action there was in full force and effect between Commodity Credit Corporation and R. S. Rainwater & Sons, a Lending Agency Agreement, known as CCC Cotton Form D, a true and [fol. 4] correct copy of the form of which is annexed hereto as a part hereof, under which the defendant, R. S. Rainwater & Sons, was authorized to make loans to producers of 1949 crop cotton in accordance with the provisions of the Lending Agency Agreement and the 1949 Cotton Loan Bulletin upon tender by the producers of warehouse receipts representing the cotton and duly executed notes.

12. The Lending Agency Agreement Provided that loans to producers should be made only to producers, on their tender of "duly executed" notes on the prescribed forms; that the date of each note must be the date on which the Lending Agency made disbursement of the loan proceeds to the producer; that disbursement was to be in the full amount stated in the note; and that the agency should not make a loan on cotton known to it to be ineligible under the terms of 1949 Cotton Loan Bulletin 1. It was also required that notes evidencing loans made in accordance with the Lending Agency Agreement must be

tendered to Commodity Credit Corporation, within 15 days from the dates of the notes, by means of a duly executed Lending Agency's Letter of Transmittal, known as CCC Cotton Form C, a true and correct copy of a form of which is annexed hereto, as a part hereof.

13. The letter of Transmittal contains certifications by the Lending Agency that the loans evidenced by the notes were made in good faith and in the belief that the cotton was eligible cotton as defined in the 1949 Cotton Loan Bulletin; that the notes were not signed in blank and carried by the payee under collateral agreements which permitted the payee to retain the notes, date them at his discretion, and deliver them to Commodity Credit Corporation; and that the full amounts of the notes were paid to the producers by the Lending Agency on the dates shown in the notes and in the manner directed by the producers; and that the persons signing the notes were au- [fol. 5] thorized to do so and to receive the proceeds. Commodity Credit Corporation agreed to pay the Lending Agency the face value of the notes plus interest thereon at the rate of 1½ per annum from the date of such notes to the date of payment by Commodity Credit Corporation.

14. During 1949 and 1950 the defendants in the manner described below entered into and carried out an agreement, combination and conspiracy to defraud the Government of the United States and Commodity Credit Corporation by obtaining and aiding to obtain the payment and allowance of false and fraudulent claims; and caused to be made, and presented and caused to be presented, for payment and approval by the Commodity Credit Corporation claims upon and again (sic) the Government of the United States and Commodity Credit Corporation which it knew to be false, fictitious and fraudulent, and, for the purpose of obtaining or aiding to obtain the payment and approval of such claims, used and caused to be used false certificates which it knew to contain false, fraudulent and fictitious statements and entries.

15. At various times in 1949 defendants bought one hundred thirty-five bales of cotton of the 1949 crop from the producers thereof. These purchases were made by the

defendants for their own account. Defendants knew that upon the consummation of each sale to defendants the cotton covered thereby became ineligible for use as collateral upon any notes under the cotton loan program. At the time of making some of defendants' purchases, defendants requested the sellers to sign 1949 Cotton Producers Note and Loan Agreements and to leave them with defendants, and that was done. Such notes were undated and incomplete as to other details when delivered to defendants. Defendant's purpose in obtaining these notes was to put themselves in a position where, if they were facing a loss on the purchased cotton because of the falling off of [fol. 6] market prices or desired to get back some of the money which they had invested, they could complete the notes and forward them, as a lending institution, to Commodity Credit Corporation and thereupon receive from Commodity Credit Corporation the loan value of the cotton described in the notes plus interest at the rate of one and one-fourth percent per annum from the dates of the notes to the dates of Commodity Credit Corporation's payments to defendants. This plan was carried into effect at various times by dating and filling in the necessary information on the notes and presenting or causing them to be presented to Commodity Credit Corporation within 15 days of the dates of the notes and thereupon receiving from Commodity the established loan amounts and interest under the program. In connection with some others of the 145 purchased bales, defendants did not obtain notes from the sellers at the time the sales to defendants were consummated; but later on defendants got in touch with the sellers and persuaded them to sign notes for the cotton which they had sold to defendants some time before, and thereupon, purporting to act as a lending agent, caused these notes to be forwarded to Commodity Credit Corporation and received from Commodity Credit Corporation the loan value of said cotton plus the established interest charges. The 135 bales of cotton were listed and described as collateral upon one or another of ninety-eight notes. The ninety-eight notes, with their accompanying warehouse receipts for the cotton, were transmitted to Commodity Credit Corporation on 14 lending agency's letters of transmittal.

16. The conduct of the defendants, as described in the preceding paragraph was a fraud upon the United States and a violation of the False Claims Act, 31 U.S.C. 231. Defendants knew that the cotton described in the notes was not eligible for pledging under the program, and that the notes did not represent advances made by de- [fol. 7] fendants as a lending agency to producers of cotton in connection with loans made to the producers under the program and in accordance with the obligations assumed by the Rainwaters under their Lending Agency Agreement described above. Defendants also knew that the following certifications made on each of the letters of transmittal were false, viz: (a) that the loans evidenced by such notes were made in good faith and in the belief that the cotton was eligible; (b) that the notes were not signed in blank and carried by the Rainwaters under collateral agreements which permitted them to retain the notes, date them at their discretion, and deliver them to the Commodity Credit Corporation; (c) that the notes were complete in every detail as to dates disbursement was made hereon; (d) that the Rainwaters had advanced the amounts of the notes to the makers thereof on the dates of the notes; and (e) that the makers of the notes were authorized to act in the capacity of makers and were entitled to receive the proceeds of the notes. The result of defendant's conduct was that Commodity Credit Corporation accepted the ninety-eight notes listed on the fourteen letters of transmittal and the one hundred thirty-five bales of cotton described as collateral therefore as representing valid transactions under the loan program and paid the defendant the total amount of the notes with interest, when if Commodity Credit Corporation had known the true facts it would have refused to accept the notes or to have paid anything to the defendant on account thereof.

Wherefore, plaintiff demands judgment against the defendants jointly and severally for the amounts provided for in 31 U.S.C. 231.

/s/ Osro Cobb, United States Attorney.

Cotton Bulletin 1

UNITED STATES DEPARTMENT OF AGRICULTURE
PRODUCTION AND MARKETING ADMINISTRATION
(COMMODITY CREDIT CORPORATION)

TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Production and Marketing Administration and Commodity Credit Corporation, Department of Agriculture

Subchapter C—Loans, Purchases and Other Operations

[1949 CCC Cotton Bulletin 1]

PART 607—COTTON

SUBPART—1949 COTTON LOAN PROGRAM

1949 COTTON LOAN BULLETIN

This bulletin contains the instructions and requirements with respect to the 1949 Cotton Loan Program of Commodity Credit Corporation (hereinafter referred to as CCC) formulated by CCC and the Production and Marketing Administration (hereinafter referred to as PMA). Loans will be made available on upland cotton produced in 1949, in accordance with this bulletin.

Sec.	
607.1	Administration.
607.2	Availability of loans.
607.3	Eligible producer.
607.4	Eligible cotton.
607.5	Approved lending agency.
607.6	Eligible storage.
607.7	Forms.
607.8	Amount.
607.9	Interest rate.
607.10	Maturity.
607.11	Preparation of documents.
607.12	Safeguarding farm storage cotton.
607.13	Liens.
607.14	Set-offs.
607.15	Lending agency.
607.16	Classification of cotton.
607.17	Warehouse receipts and insurance.
607.18	Warehouse charges.
607.19	Method of obtaining loans.
607.20	Tender of notes by lending agencies.
607.21	Custodial offices.
607.22	Loans on order bills of lading.
607.23	Advance loans.
607.24	Repayments.
607.25	Cotton cooperative marketing association loans.
607.26	Schedule of premiums and discounts for upland cotton.

AUTHORITY: §§ 607.1 to 607.26 issued under sec. 302, 52 Stat. 43, as amended, sec. 1, 62 Stat. 1247, 62 Stat. 1070; 7 U. S. C. 1302, 7 U. S. C., Supp., 1282, 15 U. S. C. 714.

§ 607.1 *Administration.* Under the general direction and supervision of the Manager, CCC, the Cotton Branch and other appropriate branches of PMA, will carry out the provisions of this program. In the field, the program will be administered through the New Orleans PMA Commodity Office, Masonic Temple Building, New Orleans, 12, Louisiana (hereinafter referred to as the "New Orleans Office"), State PMA committees and the county agricultural conservation committees (hereinafter referred to as county committees). Forms will be distributed by the New Orleans Office and will be available at the offices of county committees, approved lending agencies and approved warehouses and others designated to assist in administering the loan program.

§ 607.2 *Availability of loans.* Loans will be available to eligible producers on eligible cotton.

(a) *Area.* (1) Loans on eligible cotton stored in approved warehouses will be available in all areas.

(2) Loans on eligible cotton stored in approved structures, on or off the farm (hereinafter referred to as "farm storage"), will be available in the States and counties for which loan rates will be established.

(3) Loans on eligible cotton covered by bills of lading will be available in areas specified by the New Orleans Office.

(b) *Time.* Loans will be available from the date the loan rates are announced through April 30, 1950.

(c) *Source.* Loans may be obtained by producers from approved lending agencies or from the New Orleans Office.

§ 607.3 *Eligible producer.* An eligible producer shall be any individual, partnership, corporation, association, trust, estate, or other legal entity, or a State or political subdivision thereof, or an agency of such State or political subdivision, producing cotton in 1949 in the capacity of landowner, landlord, tenant, or sharecropper. Except as provided below, two or more producers may not obtain a joint loan. If the eligible cotton produced on a farm has been divided among the producers entitled to share in such cotton, each landlord, tenant, and sharecropper may obtain a loan on his separate share. If the cotton has not been divided, the landlord and one or more of the share tenants or sharecroppers may obtain a joint loan on their shares of such cotton. In no case shall a share tenant or sharecropper obtain a loan individually on cotton in which a landlord has an interest. In any case where a landlord obtains a loan on cotton in which a share tenant or a sharecropper has an interest, he must have the legal right to do so, and the share tenant or sharecropper must be paid his pro rata share of the loan proceeds and his pro rata share of any additional proceeds received from the cotton.

§ 607.4 *Eligible cotton.* Eligible cotton shall be cotton produced in the United States in 1949 which meets the following requirements:

(a) Such cotton must be of a grade and staple length specified in § 607.26.

(b) Such cotton must be represented by warehouse receipts complying with the provisions of § 607.17 or bills of lading complying with the provisions of § 607.22 or must be covered by a Cotton Chattel Mortgage (CCC Cotton Form F, hereinafter referred to as "Form F") and a 1949 Cotton Mortgage Supplement (1949 CCC Cotton Form FF, hereinafter referred to as "Form FF") which will give the payee of the Cotton Producer's Note (CCC Cotton Form E, hereinafter referred to as "Form E") secured by such mortgage a first lien on such cotton.

(c) Such cotton must not be false-packed, water-packed, reginned or repacked, and must not have been classed as gin cut, oily, sandy, dusty, or seedy, or reduced in grade because of extraneous matter (such as needle grass).

(d) Such cotton must not be compressed to high density.

(e) Such cotton must be free and clear of all liens and encumbrances, except warehouseman's liens in the case of warehouse-stored cotton.

(f) Such cotton must have been produced by the person tendering it for a loan, and such person must have the legal right to pledge or mortgage it as security for a loan.

(g) If the person tendering such cotton for a loan is a landlord or landowner, the cotton must not have been acquired by him directly or indirectly from a share tenant or sharecropper and must not have been received in payment of fixed or standing rent; and if it was produced by him in the capacity of landlord, share tenant, or sharecropper, it must be his separate share of the crop, unless he is a landlord and is tendering cotton in which both he and a share tenant or sharecropper have an interest.

(h) The person tendering such cotton for a loan must not have previously executed and delivered, with respect to such cotton a 1949 Cotton Producer's Note and Loan Agreement (1949 CCC Cotton Form A, hereinafter referred to as "Form A"), a Form E, or a 1949 CCC Cotton Form G–2 and must not have previously sold and repurchased such cotton.

(i) Each bale of such cotton must weigh at least 300 pounds.

§ 607.5 *Approved lending agency.* An approved lending agency shall be any bank, corporation, partnership, association, individual, or other legal entity which has entered into a Lending Agency Agreement (CCC Cotton Form D) with CCC covering loans on 1949-crop cotton. Organizations desiring to enter into such agreements should communicate with the New Orleans Office.

§ 607.6 *Eligible storage*—(a) *Warehouses.* Cotton in warehouses will be accepted as security for loans hereunder only if stored in warehouses approved by CCC. Warehousemen desiring approval of their facilities should communicate with the New Orleans Office. When warehouses are approved, notification will be given either by letter or by published lists.

(b) *Farm storage.* Cotton in farm storage will be accepted as security for loans hereunder only if stored in a structure approved by the county committee for the county in which the cotton is stored. Such structures may be on or off the farm and must afford safe storage and protection against weather damage, poultry and livestock, and reasonable protection against fire and theft. If the producer does not own the premises where the cotton is stored and his lease on such premises expires prior to September 30, 1950, the owner must execute the Consent for Storage on the Cotton Mortgage Supplement. Any other tenant who has a right or interest in the premises must also execute the Consent for Storage.

§ 607.7 *Forms.* The following documents must be delivered by producers in connection with every loan except loans made pursuant to § 607.25.

(a) *Warehouse storage loans.* (1) Cotton Producer's Note and Loan Agreement (CCC Cotton Form A) duly executed within the period prescribed in § 607.2. State documentary revenue stamps shall be affixed thereto where required by law. A Form A executed by an Administrator, executor or trustee will be acceptable only where valid in law and must be accompanied by documentary evidence of the authority of the person executing the form or by a repurchase agreement of the lending agency. Copies of this agreement may be obtained from the New Orleans Office.

(2) Warehouse receipts complying with the provisions of § 607.17.

(3) Producer's Letter of Transmittal (CCC Cotton Form B, hereinafter referred to as "Form B") if the loan is obtained direct from the New Orleans Office.

(b) *Farm storage loans.* (1) Cotton Producer's Note (CCC Cotton Form E) duly executed within the period prescribed in § 607.2.

(2) Cotton Chattel Mortgage (CCC Cotton Form F) and 1949 Cotton Mortgage Supplement (CCC Cotton Form FF) covering the cotton tendered as security for loan.

(3) Form B if the loan is obtained direct from the New Orleans Office.

(c) *Cotton represented by order bills of lading.* (1) Form A duly executed within the area and during the period such loans are available.

(2) Order bill of lading in a form acceptable to CCC and representing the cotton tendered as security for the loan.

(3) Weight and Condition Certificates complying with the provisions of § 607.22, if the Receiving Agency is not a warehouseman.

§ 607.8 *Amount.* Loans will be made on the gross weight of the cotton. Notes covering cotton pledged on reweights will not be accepted if it is evident that such reweights reflect an increase in weight due to the absorption of additional moisture. An allowance of 7 pounds per bale will be made for bales covered with cotton bagging.

The base loan rate applicable at each approved warehouse will be shown in the "Schedule of Base Loan Rates for Warehouse-Stored Cotton" and the base loan rate under the farm-storage program for each county will be shown in the "Schedule of Base Loan Rates by Counties for Farm-Stored Cotton." These schedules will be issued by CCC and will be available at county committee offices. The premium or discount applicable to each eligible grade and staple length is shown in § 607.26.

§ 607.9 *Interest rate.* Loans will bear interest at the rate of 3 percent per annum from the date of disbursement.

§ 607.10 *Maturity.* Loans mature July 31, 1950, or upon such earlier date as CCC may make demand for payment. If a producer does not repay his loan by maturity, CCC has the right to sell, purchase or pool the cotton securing the loan in accordance with the provisions of the loan agreements. If the cotton is pooled, the producer will no longer have a right to redeem the cotton, but will share rateably in any overplus remaining upon liquidation of the pool. CCC shall have the right to treat any pooled cotton as a reserve supply to be marketed under such sales policies as CCC determines will promote orderly marketing, protect the interests of producers and consumers, and not unduly impair the market for the current crop of cotton, even though part or all of such pooled cotton is disposed of under such policies for prices less than the current domestic price for such cotton.

Any sum due the producer as a result of the sale of the cotton or collections of insurance proceeds therefrom, or any payments from a pool, shall be payable only to the producer or his personal representative without right of assignment to or substitution of any other person.

(a) *Farm storage.* If the producer does not repay his loan on or before maturity, he is required to deliver the cotton in accordance with the provisions of Form FF, and if the cotton is not delivered by the producer, the holder of the note may enter on the premises where the cotton is stored and remove the cotton. Upon such delivery or removal, the holder may dispose of the cotton in accordance with the provisions of this section. CCC will not require the producer to insure cotton under farm-storage loan; however, if the producer does insure the cotton, such insurance shall inure to the benefit of CCC to the extent of its interest, after first satisfying the producer's equity in the cotton involved in the loss.

In the event CCC is the holder of the note on maturity, it will, upon delivery of the cotton in accordance with Form FF, make a storage payment to the producer at the rate of 10 cents a bale for each month or fraction thereof between the date of disbursement of the proceeds of the note and the maturity of the note, provided the producer has not made a fraudulent representation or converted any bale of the cotton.

§ 607.11 *Preparation of documents.* All blanks on the loan forms must be filled in with ink, indelible pencil, or typewriter in the manner indicated therein, and no documents containing additions, alterations, or erasures will be accepted by CCC. The spaces provided in the notes on Forms A and E for the producer to request and direct payment of the proceeds of the note must be completed in every instance. All disbursements made from the proceeds of the note by the lending agency including clerks' fees when deducted, must be shown. If the proceeds are to be paid only to the producer, his name should be shown. The total must agree with the amount of the note.

(a) *Warehouse-storage cotton.* A producer desiring to obtain a loan on warehouse-stored cotton may obtain the necessary forms from county committees, approved lending agencies, approved warehouses, and approved clerks (persons approved by the county committees to assist producers in preparing and executing the loan forms). The Clerk's Certificate in each Form A tendered for a loan must be executed by an approved clerk, who will assist the producer in the preparation and execution of the Form A. The original of Form A must be signed by the producer, and the copy marked "duplicate" is to be retained by the producer. All of the cotton pledged as security for any one loan must be of only one grade and staple and must be stored in the same warehouse.

(b) *Farm-storage cotton.* A producer desiring to obtain a loan on farm-storage cotton should communicate with the county committee in the county in which the cotton is to be stored. The county committee will inspect the storage structure and approve it if it determines that it is of such construction as to afford adequate storage for the cotton. A service fee of $1 per bale with a minimum of $3.00 per loan will be collected by the county committee from the producer to cover services rendered under this program. No service fees will be refunded. The producer may also obtain the necessary loan forms from, and will be assisted in their preparation by, the county committee. A deposit of $1.00 per bale will also be collected from the producer to guarantee delivery of the cotton if the loan is not repaid by the producer. Such deposit will be returned if the loan is repaid or the cotton is delivered in accordance with the provisions of the Form FF. If the producer does not deliver the cotton upon demand by CCC, the county committee will arrange delivery and retain the deposit, and no storage payment will be made. Each Form E must be approved by the county committee, and the member signing such form in the space provided certifies on behalf of the county committee that the producer is, to the best of the committee's knowledge and belief, eligible for a loan on the cotton. The original of the Form FF will be retained by the county committee. If the producer desires to obtain a loan directly from CCC, the county committee will forward the loan documents for the producer.

(c) *Fees.* The clerk or county committee assisting the producer in the preparation of the loan documents may collect a fee from the producer not to exceed the fees shown in the following schedule:

Number of bales on the note:	*Maximum fee allowed*
1	25 cents.
2–6	25 cents plus 15 cents for each bale over 1.
7–18	$1.00 plus 10 cents for each bale over 6.
19 and over	$2.20 plus 5 cents for each bale over 18.

§ 607.12 *Safeguarding farm-storage cotton.* The producer obtaining a farm-storage loan is obligated to maintain the farm-storage structure in good repair and will be responsible for any loss or damage occurring as a result of his fault or negligence or as a result of any cause other than fire, flood, lightning, explosion, windstorm, cyclone, or tornado except that he will not be responsible for loss in weight of not to exceed 10 pounds per bale which is due to natural shrinkage. The maximum amount of cotton stored in any structure shall be limited to 200 bales if only one producer has cotton stored in such structure and to 100 bales if more than one producer has cotton stored in such structure. The conversion or unlawful disposition of any bale of the cotton will render the producer personally liable for the payment of the mortgage indebtedness.

§ 607.13 *Liens.* Eligible cotton must be free and clear of all liens (except warehouseman's liens in the case of warehouse-storage cotton). The signatures of the holders of all existing liens on cotton tendered as security for a loan, such as landlords, laborers, or mortgagees (but not the warehouseman, if the cotton is stored in a warehouse), must be obtained in the Lienholders' Waiver on each Form A and Form FF. If the producer tendering the cotton for the loan is not the owner of the land on which the cotton was produced, all landowners and landlords must sign the Lienholders' Waiver on the Form A or Form FF whether or not they claim liens, unless they sign the note jointly with the borrower. A fraudulent representation, as to prior liens or otherwise, will render the producer personally liable under the terms of the Loan Agreement and subject him to criminal prosecution under the provisions of the Commodity Credit Corporation Charter Act. The Lienholders' Waiver must be signed personally by all lienholders, by their agents (in which case duly executed powers of attorney must be attached), or, if a corporation, by the designated officer thereof customarily authorized to execute such instruments (in which case no authority need be attached).

§ 607.14 *Set-offs.* If the producer is indebted to CCC, whether or not such indebtedness is listed on the county debt register, he must designate CCC as the payee of the proceeds of the loan to the extent of such indebtedness, but not to exceed that portion of the proceeds remaining after deduction of loan service fees and amounts due prior lienholders. If the producer is indebted to any other agency of the United States and such indebtedness is listed on the county debt register, he shall be required to designate such agency as payee of the proceeds as provided above. Indebtedness owing to CCC shall be given first consideration after claims of prior lienholders.

County committees will furnish each approved clerk a list of the names and addresses of all persons shown on the county debt register. Lists will also be furnished to clerks in adjacent counties as is determined necessary by the county committee. These lists shall be kept up to date and revised and supplemented as determined necessary by the county committee.

Before the clerk prepares loan documents, he shall determine that the producer's name is not shown on the list furnished by the county committee. If the person is shown on such list, he shall be informed that unless he can produce satisfactory evidence that the indebtedness has been satisfied, he must go to the office of the county committee in the county issuing the list containing his name and have his loan documents completed by a clerk in the county office. A clerk in the office of the county committee will assist the producer in the preparation of such loan documents and will show in the space provided in the notes the agency to which the check should be issued and the amount to be collected from the note.

§ 607.15 *Lending agency.* The lending agency shall execute the Payee's Endorsement on Forms A and E. In the case of warehouse-storage cotton, care should be exercised by the lending agency to determine that the warehouse receipts are genuine. No deduction may be made from the loan proceeds by the lending agency as a charge for handling the loan documents, except the authorized clerk's fee in case an employee of the lending agency has executed the Clerk's Certificate on Form A. Lending agencies may carry their investment in the loans and receive interest at the rate of 1½ percent per annum. Lending agencies which are also eligible producers must obtain direct loans from the New Orleans Office in accordance with § 607.19 on cotton produced by them.

§ 607.16 *Classification of cotton.* All cotton must be classed by a Board of Cotton Examiners of the United States Department of Agriculture (hereinafter referred to as the "Board"). Warehousemen (for warehouse-storage cotton), receiving agencies (for cotton covered by bills of lading) and county committees (for farm-storage cotton) should forward samples to the Board serving the district in which the cotton is located. A Cotton Classification Memorandum Form A3 must be inserted in each sample. A tag list on a form furnished by CCC must be prepared by the warehouseman, receiving agency or county committee listing each sample included in a shipment to the Board. A copy of such tag list shall be included with the samples and two copies must be mailed separately to the Board. The Board will enter the classification of each bale on the tag list and return a copy of such list to the warehouse, receiving agency or county committee. The Cotton Classification Memorandum Form A3 will be returned to the producer by the Board. A Cotton Classification Memorandum Form 1 of the United States Department of Agriculture will also be accepted, provided the sample is a representative cut sample drawn in accordance with instructions to organized cotton improvement groups for sampling cotton under the 1949 Smith-Doxey Program. If a sample has been drawn and submitted for a Form 1 classification, another sample may not be drawn and forwarded to a Board except for review.

A charge of 25 cents per bale shall be collected from the producer for all cotton from which samples are submitted to a Board for classification, except that no charge shall be collected for samples submitted for Form 1 classification. Each Board will make collections for classing charges from the warehousemen, receiving agencies, and county committees at the end of each month. A certified check, cashier's check, or postal money order payable to Treasurer of United States in care of CCC must be sent to the Board by each warehouseman, receiving agency, and county committee in payment of these charges.

§ 607.17 *Warehouse receipts and insurance.* Only negotiable warehouse receipts issued by an approved warehouse in the name of the individual, individuals, or concern who appear as producer on the Cotton Producer's Note to which the receipt is pledged, will be acceptable, except that receipts representing cotton pledged in the name of a landowner landlord, tenant or sharecropper or pledged jointly in the name of two or more parties to a tenancy will be acceptable when issued in the name of either individual who is a party to the tenancy or a signatory to the note. The warehouse receipts must show that the cotton is covered by fire insurance, must be dated on or prior to the date of the producer's notes; and, if not bearer form receipts, must be properly assigned by an endorsement in blank so as to vest title in the holder. They must set out in their written or printed terms a description by tag number and weight of the bale represented thereby and all other facts and statements required to be stated in the written or printed terms of a warehouse receipt under the provisions of section 2 of the Uniform Warehouse Receipts Act. Warehouse receipts issued prior to August 1, 1949, which by their terms will expire prior to August 1, 1950, must bear an endorsement of the warehouseman extending the terms of the warehouse receipts for a period of one year from August 1, 1949. Block warehouse receipts will not be accepted.

In addition to the insurance carried by the warehouseman, CCC will carry insurance on the loan cotton covering losses due to flood and errors and omissions in the warehouseman's insurance. The cost of such insurance will be a charge against the cotton.

§ 607.18 *Warehouse charges.* The warehouseman's charges are limited and his obligations defined by the Warehouseman's Certificate and Storage Agreement contained in Form A. The Agreement of Warehouseman on Form A must be executed by the warehouseman not more than 10 days preceding the date of the note.

§ 607.19 *Method of obtaining loans.* Producers may obtain loans from a local lending agency which, in turn, will tender the notes evidencing such loans to CCC or direct from the New Orleans Office. A producer, if he so desires, may designate persons other than himself to receive all or part of the proceeds of the loan by designating them in the spaces provided in the note. In each case where the loan is obtained from the New Orleans Office, the note must be made payable to CCC and must be tendered to the New Orleans Office with a Form B, in duplicate, postmarked not later than April 30, 1950, if tendered by mail. Upon receipt of all necessary documents, properly executed, and upon approval, payment will be made in accordance with the directions of the producer contained in the note.

§ 607.20 *Tender of notes by lending agencies.* Notes (Forms A and Forms E) evidencing loans made by a lending agency which has entered into a Lending Agency Agreement (CCC Cotton Form D) prior to the making of the loans will be eligible for purchase or pooling by CCC. Under this agreement, lending agencies which are parties thereto are required to tender to CCC, on Form C, executed in quadruplicate, all notes on Form A and Form E, with warehouse receipts, bills of lading (and weight and condition certificates, if required), or cotton chattel mortgages attached, representing loans made by the lending agency within 15 days after the dates of the notes. Forty notes shall be submitted on each Form C except when fewer notes are listed thereon in order that the loans may be tendered within 15 days after the dates of the notes. Only notes covering cotton stored in warehouses in the same custodial district may be transmitted on a Form C. Notes secured by warehouse receipts, by bills of lading and by chattel mortgages must be transmitted on separate Forms C. Notes accompanied by Producer's Powers of Attorney must also be transmitted on separate Forms C. Each Form C shall state whether the lending agency desires CCC to purchase the notes or to place them in a pool. Upon receipt of the loan papers by the New Orleans Office, they will be examined and, if found correct, will be approved and will be transmitted to the Custodial Office serving the district in which the cotton is stored, and purchased or placed in a pool, as directed by the lending agency. Lending agencies which have previously been appproved by CCC as eligible to draw drafts on CCC may, subject to such instructions and requirements as CCC may hereafter from time to time prescribe, obtain immediate payment for notes it desires to sell to CCC, by tendering such notes and letters of transmittal with sight drafts drawn on CCC through a Federal Reserve Bank or Branch Bank approved by CCC. In the event that the notes are pooled, a Certificate of Interest representing the interest in the pool acquired as the result of the deposit therein of the notes shown on the Form C will be issued to any approved lending agency designated on the Form C.

§ 607.21 *Custodial offices.* The custodial offices referred to herein and the district served by each are shown below:

(a) *Warehouse-storage cotton.*

Location and District Served

Federal Reserve Bank, Atlanta, Ga.: Georgia, Alabama, Florida, Virginia, North Carolino, South Carolina.

Federal Reserve Bank, Dallas, Tex.: New Mexico, Texas.

Federal Reserve Bank, Los Angeles, Calif.: California, Arizona.

Federal Reserve Bank, Memphis, Tenn.: Illinois, Kentucky, Arkansas, Missouri, Tennessee, and the following counties in Mississippi: Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, DeSoto, Grenada, Holmes, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, Yalobusha.

New Orleans office: Louisiana and counties in Mississippi not assigned to Memphis.

Federal Reserve Bank, Oklahoma City, Okla.: Oklahoma.

(b) *Farm-storage cotton.*

New Orleans office: All States.

§ 607.22 *Loans on order bills of lading.* Loans on cotton represented by order bills of lading will be available only in areas specified by the New Orleans Office where there is a shortage of storage space and where the necessary arrangements for handling the cotton may be made.

Cotton represented by order bills of lading will be eligible for a loan only when it is shipped by an approved receiving agency as agent for the producer. Warehousemen, ginners, and other responsible parties in areas where such loans are available may be approved to act as receiving agencies by the New Orleans Office. Receiving agencies will enter into Receiving Agency Agreements with CCC. When receiving agencies are approved, notification will be given by letter or published lists.

A producer who is unable to find storage space in his local area and who wishes to obtain such a loan should deliver his cotton to a receiving agency with the request that it ship the cotton as agent for the producer to a warehouse where storage space is available. The receiving agency will complete the Schedule of Pledged Cotton on a Form A and, if it is a warehouseman, will execute the Warehouseman's Certificate and Storage Agreement thereon. If the receiving agency is not a warehouseman, it will have the cotton weighed by a public or licensed weigher and will secure a Weight and Condition Certificate in the form prescribed by CCC. The receiving agency will ship the cotton, secure order bills of lading in a form acceptable to CCC, and deliver the bills of lading, Forms A, and Weight and Condition Certificates (if any) to the producer. If the receiving agency is a warehouseman, it will be permitted to collect fees in accordance with the Warehouseman's Certificate and Storage Agreement and a fee of not to exceed 10 cents a bale to cover the cost of preparation of shipping documents. If the receiving agency is not a warehouseman, it will be permitted to collect from producers a fee not to exceed the fee set forth in the Receiving Agency Agreement executed by the receiving agency and shall post, in a conspicuous place, a notice showing the fee to be charged producers. Loans will be made at the full loan rate at the point where the receiving agency receives the cotton. CCC will pay warehouse storage charges on cotton tendered by the producer for a loan under this section, if the receiving agency is a warehouseman.

§ 607.23 *Advance loans.* If a producer desires to obtain a loan hereunder on cotton stored or to be stored in a warehouse, prior to the announcement of the loan rates on such cotton, prior to the receipt of the classification of such cotton by a Board of Cotton Examiners, or prior to the issuance of a warehouse receipt representing the cotton, and if the producer desires to obtain interim financing from a lending agency until such time as a CCC loan may be obtained, the lending agency may make the producer a private loan (hereinafter called "the advance loan") on such cotton on forms and in amounts agreed upon between the lending agency and the producer and may obtain from the producer a duly executed Producer's Power of Attorney (CCC Cotton Form J, hereinafter referred to as "Form J") in triplicate authorizing and directing the lending agency to prepare or cause to be prepared and execute on behalf of and in the name of the producer Forms A covering all such cotton which is eligible for a loan hereunder. The duplicate copy shall be delivered to the producer. On or before the date the advance loan is made, samples must have been drawn from the cotton and submitted to a Board of Cotton Examiners for Classification or, if the cotton has not arrived at the warehouse, the warehouseman must have been instructed to sample the cotton and forward the samples for classification upon receipt of the cotton at the warehouse. On or before September 1, 1949, or within 15 days after the dates of the classification certificates, or within 15 days after the dates of the warehouse receipts, whichever is later, the lending agency shall (as provided in the Producer's Power of Attorney), unless the cotton is redeemed by the producer prepare or cause to be prepared and execute on behalf of the producer Forms A covering all of such cotton which is eligible for a loan and make a CCC loan or loans to the producer hereunder. The lending agency shall promptly remit to the producer any difference between the amount due on the advance loan and the proceeds of the CCC loan, less any applicable charges hereunder paid by the lending agency on behalf of the producer. The duplicate copies of Forms A and the canceled note evidencing the advance loan shall be forwarded to the producer. The original of the Producer's Power of Attorney shall be transmitted with the notes when they are tendered to CCC.

It shall be the joint responsibility of the lending agency named in the Form J to obtain the official classification from the producer or the warehouseman and of the producer to deliver the official classification to such lending agency within 15 days from the date of the classification certificate so that the Form A loans can be made within the specified time.

It shall be the responsibility of the lending agency named in the Form J to obtain the execution of the Warehouseman's Certificate and Storage Agreement and the Clerk's Certificate on the Forms A. Only bona fide employees of lending agencies making the advance loans who are approved as clerks by the county committee or ap-

(p. 11)

proved clerks in the office of the county committee will be permitted to execute the Clerk's Certificate on Forms A covering cotton on which advance loans have been made.

§ 607.24 *Repayments*—(a) *Warehouse-stored cotton.* No partial release of the cotton represented by warehouse receipts and securing a note will be permitted. If a producer desires to obtain the return of his note and the release of the cotton securing the note, he must execute the Producer's Redemption Request on the Producer's Loan Statement, which will be furnished to the producer by the New Orleans Office at the time the notes are processed by that office, and send or deliver it to CCC, in care of the custodial office serving the district in which the cotton is stored, as shown in § 607.21. If the producer desires to sell his equity in the cotton, he must complete the Producer's Equity Transfer Agreement in the Producer's Equity Transfer on the reverse side of the Producer's Loan Statement furnished him by the New Orleans Office, and the Certificate of Witness in the Producer's Equity Transfer must be dated and signed by a witness approved for such purpose by a county committee in the cotton-producing area. Outside the cotton-producing area, the certificate may be executed by a notary public. The equity purchaser must complete the Certificate of Purchaser in the Producer's Equity Transfer and send it to CCC, in care of the custodial office serving the district in which the cotton is stored. Upon receipt of the Producer's Redemption Request or the Producer's Equity Transfer, the custodial office will forward the note and warehouse receipts to any approved bank designated by the person requesting their release, with directions to the bank to release the note and warehouse receipts only to the producer or holder of the equity transfer upon payment of the amount due on the loan. In all such cases, the bank will be instructed to return the note and warehouse receipts to the custodial office if payment is not effected within 15 days. All charges assessed by the bank to which the note and warehouse receipts are sent must be paid by the person requesting the release of the cotton. In the event the Producer's Loan Statement is destroyed or lost, the producer may obtain a duplicate of such form from the custodial office serving the district in which the cotton is stored.

(b) *Farm-stored cotton.* If a producer desires to repay his loan and obtain the release of the cotton securing the note, he may obtain complete instructions from the county committee of the county in which the cotton is stored. Partial releases will be allowed.

§ 607.25 *Cotton cooperative marketing association loans.* A special form of loan agreement will be made available to cotton cooperative marketing associations whereby members of such associations may act collectively in obtaining loans. The loan rates under this agreement will be the same as the loan rates to individual producers, and loans to such associations will otherwise be made on substantially the same basis as loans to individual producers. Members desiring to obtain loans from their associations should contact their associations.

§ 607.26 *Schedule of premiums and discounts for upland cotton (basis 15/16 inch middling).*

the notes are processed by that office, and send or deliver it to CCC, in care of the custodial office serving the district in which the cotton is stored, as shown in § 607.21. If the producer desires to sell his equity in the cotton, he must complete the Producer's Equity Transfer Agreement in the Producer's Equity Transfer on the reverse side of the Producer's Loan Statement furnished him by the New Orleans Office, and the Certificate of Witness in the Producer's by the person requesting their release, with directions to the bank to release the note and warehouse receipts only to the producer or holder of the equity transfer upon payment of the amount due on the loan. In all such cases, the bank will be instructed to return the note and warehouse receipts to the custodial office if payment is not effected within 15 days. All charges assessed by the bank to which the note and warehouse receipts are sent must be paid by the per- loan agreement will be made available to cotton cooperative marketing associations whereby members of such associations may act collectively in obtaining loans. The loan rates under this agreement will be the same as the loan rates to individual producers, and loans to such associations will otherwise be made on substantially the same basis as loans to individual producers. Members desiring to obtain loans from their associations should contact their associations.

§ 607.26 Schedule of premiums and discounts for upland cotton (basis 15/16 inch middling).

Grade	Staple length (inches)													
	13/16	7/8	29/32	15/16	31/32	1	1 1/32	1 1/16	1 3/32	1 1/8	1 5/32	1 3/16	1 7/32	1 1/4 & longer
White and Extra White	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*	*Pts.*
Good Middling and Better	−295	−175	−65	50	75	110	150	180	270	430	705	1, 205	1, 870	2, 155
Strict Middling	−305	−185	−75	35	65	100	135	165	255	420	680	1, 180	1, 845	2, 130
Middling	−340	−220	−110	Base	2943 25	60	90	115	175	325	575	1, 065	1, 735	1, 955
St. Low Middling	−485	−370	−265	−165	−145	−120	−95	−70	−10	100	245	655	900	1, 000
Low Middling	−875	−780	−685	−605	−600	−585	−580	−580	−570	−560	−545	−530	−520	−495
St. Good Ordinary	−1, 280	−1, 195	−1, 095	−1, 000	−1, 000	−995	−995	−985	−960	−950	−950	−950	−950	−950
Good Ordinary	−1, 545	−1, 415	−1, 315	−1, 230	−1, 230	−1, 230	−1, 230	−1, 210	−1, 140	−1, 115	−1, 115	−1, 115	−1, 115	−1, 115
Spotted														
Good Middling	−425	−320	−205	−100	−80	−65	−50	−35	−5	20	55	95	145	195
Strict Middling	−435	−335	−220	−115	−95	−75	−60	−45	−15	5	35	70	120	170
Middling	−615	−515	−405	−295	−280	−260	−250	−240	−195	−170	−145	−120	−95	−70
St. Low Middling	−1, 165	−1, 055	−945	−830	−825	−815	−815	−810	−810	−810	−810	−810	−810	−810
Low Middling	−1, 500	−1, 415	−1, 320	−1, 215	−1, 215	−1, 215	−1, 215	−1, 210	−1, 200	−1, 200	−1, 200	−1, 200	−1, 200	−1, 200
Tinged														
Good Middling	−1, 060	−920	−835	−750	−750	−725	−720	−710	−680	−655	−630	−580	−530	−505
Strict Middling	−1, 105	−955	−865	−785	−785	−760	−755	−740	−700	−675	−650	−600	−550	−525
Middling	−1, 350	−1, 220	−1, 135	−1, 050	−1, 050	−1, 035	−1, 035	−1, 025	−1, 005	−1, 005	−1, 005	−1, 005	−1, 005	−1, 005
St. Low Middling	−1, 690	−1, 520	−1, 420	−1, 345	−1, 345	−1, 335	−1, 335	−1, 310	−1, 275	−1, 260	−1, 260	−1, 260	−1, 260	−1, 260
Low Middling	−1, 860	−1, 715	−1, 620	−1, 555	−1, 550	−1, 550	−1, 550	−1, 540	−1, 525	−1, 515	−1, 515	−1, 515	−1, 515	−1, 515
Yellow Stained														
Good Middling	−1, 405	−1, 265	−1, 165	−1, 080	−1, 080	−1, 080	−1, 075	−1, 070	−1, 060	−1, 050	−1, 050	−1, 050	−1, 050	−1, 050
Strict Middling	−1, 475	−1, 320	−1, 220	−1, 135	−1, 135	−1, 130	−1, 130	−1, 120	−1, 100	−1, 085	−1, 085	−1, 085	−1, 085	−1, 085
Middling	−1, 675	−1, 485	−1, 380	−1, 305	−1, 300	−1, 300	−1, 300	−1, 295	−1, 295	−1, 295	−1, 295	−1, 295	−1, 295	−1, 295
Gray														
Good Middling	−510	−455	−345	−265	−245	−230	−220	−210	−200	−180	−105	−30	20	85
Strict Middling	−550	−490	−375	−295	−280	−270	−255	−245	−225	−200	−130	−55	−5	60
Middling	−655	−570	−460	−375	−365	−355	−340	−330	−320	−315	−300	−270	−245	−235
St. Low Middling	−1, 150	−1, 050	−960	−875	−850	−850	−850	−850	−850	−850	−850	−850	−850	−850

Issued this 30th day of June 1949.

[SEAL]

ELMER F. KRUSE,
Manager,
Commodity Credit Corporation.

Approved:

RALPH S. TRIGG,
President,
Commodity Credit Corporation.

Note:

Pages 12 - 16 are on card 2.

[fol. 20] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed January 5, 1956

The defendants move the Court as follows:

I.

To dismiss the action, because it appears upon the face of the complaint that the Court lacks jurisdiction of the subject matter.

II.

To dismiss the action because the complaint fails to state a claim against the defendants, or any of them, upon which relief can be granted.

Catlett & Henderson, by Leon B. Catlett, 727 Pyramid Life Bldg., Little Rock, Arkansas.

[fol. 21] IN UNITED STATES DISTRICT COURT

RESPONSE TO MOTION TO DISMISS—Filed February 16, 1956

Comes the plaintiff, United States of America, by Osro Cobb, United States Attorney for the Eastern District of Arkansas, and in response to the defendant's Motion to Dismiss, states:

I.

That the Complaint shows affirmatively the jurisdiction of this Court of the subject matter of the action.

II.

That the Complaint states a claim against the defendants upon which the Court can grant relief.

The plaintiff submits that the defendants' motion to dismiss should be denied.

Osro Cobb, United States Attorney, /s/ James W. Gallman, Assistant United States Attorney.

[fol. 22] IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING MOTION TO DISMISS—May 8, 1956

On this day the court takes under consideration the motion of the defendant to dismiss the complaint.

Upon examination of the motion of the defendant, to dismiss the complaint filed on January 5, 1956, the response to the motion filed by the plaintiff on January 16, 1956, and the memorandum brief of the defendants filed at the time of the filing of the motion to dismiss, the court, being well and sufficiently advised, finds that the motion of the defendants should be sustained on the grounds that the court lacks jurisdiction of the subject matter and that the complaint fails to state a claim upon which relief can be granted.

It Is So Ordered on this May 8, 1956.

/s/ Thomas C. Trimble, Chief Judge, United States District Court.

[fol. 23] IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS, JONESBORO DIVISION

No. J-925

Civil

UNITED STATES OF AMERICA, Plaintiff,

v.

CITIZENS NATIONAL BANK, Walnut Ridge, Arkansas, Defendant.

COMPLAINT—Filed November 29, 1955

1. This is a civil action brought by the United States of America as plaintiff under the provisions of Section 3490-

3492, inclusive, and Section 5438 of the Revised Statutes (31 U.S.C. 231-233) of which this court has jurisdiction under Section 3491 of the Revised Statutes, as amended (31 U.S.C. 231-232).

2. The defendant, Citizens National Bank, Walnut Ridge, Arkansas, is a national banking association duly organized and existing according to law, and is a resident of and found in Walnut Ridge, Arkansas, within the jurisdiction of this court.

3. Commodity Credit Corporation is an agency and instrumentality of the United States within the Department of Agriculture. All the employes of Commodity Credit Corporation are and were at all times mentioned herein [fol. 24] persons in the civil service of the United States. The officials of Commodity Credit Corporation are and were at all times mentioned herein officers in the civil service of the United States.

4. On June 30, 1949 Commodity Credit Corporation issued its 1949 Cotton Bulletin I and duly published the same in 14 F. R. 3723. A true and correct copy annexed hereto as a part hereof contains regulations for the 1949 Cotton Loan Program under which loans were made available to producers of cotton upon 1949 crop cotton produced by them ~~as authorized and directed~~ by Section 1 of the Agricultural Act of 1948 (7 U.S.C. 1282) and the Commodity Credit Corporation Charter Act (62 Stat. 1070, 15 U.S.C. 714).

5. The 1949 Cotton Bulletin 1 limited loans to "eligible cotton" and "eligible producers." "Eligible producer" was defined as any person producing cotton in 1949 in the capacity of landowner, landlord, tenant or sharecropper. "Eligible cotton" was defined as cotton which had been produced by the person tendering it for a loan. Loans could be made only to actual producers on the security of their own cotton owned by them at the time of the loan. Cotton which was bought from a producer was not eligible for a loan to the buyer. The Cotton Bulletin required a producer desiring a loan on his cotton to tender a duly executed 1949 Cotton Producer's Note and Loan Agreement (herein-

after referred to as a "note") known as Cotton Form A, a true and correct copy of a form of which is annexed hereto as a part hereof, listing the warehouse receipt numbers and description of the cotton and pledging the warehouse receipts representing the cotton as security for the loan.

6. Each note contained representations and warranties that the named maker-producer had produced the cotton; that he had the legal right to pledge the cotton as collateral [fol. 25] security for the loan; that the benefits of the loan would accrue solely to him and any tenants or sharecropper having an interest in the cotton; that the benefits of the loan had not been transferred to any other party by way of assignment, sale or option; and that he was eligible for a loan on the cotton in accordance with the terms of the 1949 Cotton Loan Bulletin 1.

7. During the period involved in this action there was in full force and effect between Commodity Credit Corporation and the defendant, Citizens National Bank, a Lending Agency Agreement, known as CCC Cotton Form D, a true and correct copy of the form of which is annexed hereto as part hereof, under which the defendant, Citizens National Bank, was authorized to make loans to producers of 1949 crop cotton in accordance with the provisions of the Lending Agency Agreement and the 1949 Cotton Loan Bulletin upon tender by the producers of warehouse receipts representing the cotton and duly executed notes.

8. During the period involved in this action there was in full force and effect between Commodity Credit Corporation and R. S. Rainwater & Sons, a Lending Agency Agreement, known as CCC Cotton Form D, a true and correct copy of the form of which is annexed hereto as a part hereof, under which R. S. Rainwater & Sons, was authorized to make loans to producers of 1949 crop cotton in accordance with the provisions of the Lending Agency Agrement (sic) and the 1949 Cotton Loan Bulletin upon tender by the producers of warehouse receipts representing the cotton and duly executed notes.

9. The Lending Agency Agreement Provided that loans to producers should be made only to producers, on thei:

tender of "duly executed" notes on the prescribed forms; that the date of each note must be the date on which the Lending Agency made disbursement of the loan proceeds [fol. 26] to the producer; that disbursement was to be in the full amount stated in the note; and that the agency should not make a loan on cotton known to it to be ineligible under the terms of 1949 Cotton Loan Bulletin 1. It was also required that notes evidencing loans made in accordance with the Lending Agency Agreement must be tendered to Commodity Credit Corporation, within 15 days from the dates of the notes, by means of a duly executed Lending Agency's Letter of Transmittal, known as CCC Cotton Form C, a true and correct copy of a form of which is annexed hereto, as a part hereof.

10. The letter of Transmittal contains certifications by the Lending Agency that the loans evidenced by the notes were made in good faith and in the belief that the cotton was eligible cotton as defined in the 1949 Cotton Loan Bulletin; that the notes were not signed in blank and carried by the payee under collateral agreements which permitted the payee to retain the notes, date them at his discretion, and deliver them to Commodity Credit Corporation; and that the full amounts of the notes were paid to the producers by the Lending Agency on the dates shown in the notes and in the manner directed by the producers; and that the persons signing the notes were authorized to do so and to receive the proceeds. Commodity Credit Corporation agreed to pay the Lending Agency the face value of the notes plus interest thereon at the rate of $1\frac{1}{2}$ per annum from the date of such notes to the date of payment by Commodity Credit Corporation.

11. During 1949 and 1950 the defendant in the manner described below entered into and carried out an agreement, combination and conspiracy to defraud the Government of the United States and Commodity Credit Corporation by obtaining and aiding to obtain the payment and allowance of false and fraudulent claims; and caused to be made, and presented and caused to be presented, for payment and [fol. 27] approval by the Commodity Credit Corporation claims upon and again (sic) the Government of the United States and Commodity Credit Corporation which it knew to

1949 C. C. C. Cotton Form A
6-8-49
U. S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

Budget Bureau.
Clearance waived.

ORIGINAL

ATTACH WAREHOUSE RECEIPTS OR BILLS OF LADING HERE

1949 COTTON PRODUCER'S NOTE AND LOAN AGREEMENT

Fill all blanks with ink, indelible pencil, or typewriter. The copy marked *original* is to be signed; the copy marked *duplicate* is to be retained by the producer. No papers containing additions, erasures, or alterations will be accepted by Commodity Credit Corporation.

COUNTY	STATE	LOAN No.
DO NOT USE THIS SPACE		

Producer (Print) ______ (Last name) (First name) (Middle initial)

Status ______ (State whether landowner, landlord, tenant, or sharecropper)

Address ______ (Complete address)

Cotton produced in ______ (County) (State)

If Advance Loan was made, Producer's Power of Attorney No.______

SCHEDULE OF PLEDGED COTTON

______ (Name of warehouse) ______ (Address) ______ (Warehouse number)

Notice.—All warehouse-stored cotton securing this note must be in the same warehouse and secured by single-bale receipts. Bale tag and receipt number must agree.

Warehouse Receipt and Bale Tag No.	Date on Which Storage Charges Begin	Date of Official Classification	Compression [1]	Compression Paid [2]	Transportation Code [3]	Bagging [4]	Gross Weight [5]	Reduced From A/C

Number of bales______ All cotton listed is (grade and staple)______ Total gross weight______ Loan value (per pound)______

[1] Enter applicable term "flat" or "S. D." [2] Enter "yes" if paid, "no" if unpaid. [3] Enter "00" if received by wagon, truck or barge; if received by rail, enter code No. of railroad. [4] Enter kind of bagging. [5] If bale is covered with cotton bagging, add 7 pounds to the warehouse receipt weight to obtain the gross weight of the bale to be entered in column "gross weight."

AGREEMENT OF WAREHOUSEMAN

The undersigned warehouseman hereby agrees that the cotton described in the above or attached schedule shall be stored and handled in accordance with the terms and conditions of the Warehouseman's Certificate and Storage Agreement on the reverse side hereof and makes the representations contained in such Warehouseman's Certificate and Storage Agreement with respect to such cotton.

Date______, 19___ ______ (Signature of warehouseman) * ______ (Agent or officer-title)

(This Agreement must not be dated more than 10 days preceding date of Producer's Note nor subsequent to the date of the Note)

PRODUCER'S NOTE

$______ Date______

On or before July 31, 1950, or upon such earlier date as Commodity Credit Corporation may make demand for payment, for value received, the undersigned (hereinafter called "the Producer") promises to pay to the order of ______ Payee, at the office of Commodity Credit Corporation, Washington, D. C. ______ /100 dollars, with interest from the date hereof until paid at the rate of 3 percent a year. The makers and endorsers severally waive presentment for payment, demand, protest, notice of protest, and notice of nonpayment of this note.

This note evidences a loan made available under the 1949 Cotton Loan Program of Commodity Credit Corporation (formulated pursuant to the Agricultural Adjustment Act of 1938, as amended and supplemented) and is secured by warehouse receipts or bills of lading representing the cotton described in the Schedule of Pledged Cotton above or in the schedule attached hereto. The Producer understands and agrees that the loan is made subject to and in consideration of the representations, warranties, and agreements contained in the Loan Agreement on the reverse side hereof and certifies that he has read the Loan Agreement and that he has made the representations, warranties, and agreements contained therein, with full knowledge of the provisions of Section 15(a) of the Commodity Credit Corporation Charter Act*, for the purpose of obtaining the loan, rendering this note eligible for purchase by or discount to Commodity Credit Corporation, an agency of the United States, and inducing such agency to acquire this note.

The Producer requests and directs the payee of this note to make funds available from the proceeds of the loan as follows:

NAME	ADDRESS	AMOUNT
		$
	TOTAL,	$

______ (Witness to producer's signature) ______ (Signature of producer) ______ (Print producer's name)

______ (Witness to Joint-producer's signature) ______ (Signature of Joint-producer or Agent) ______ (Print Joint-producer's or Agent's name)

LIENHOLDER'S WAIVER

(All landlords must sign this lien waiver whether or not they claim liens, unless they have signed the Producer's Note. The Producer, by signing this instrument, certifies that the cotton described in the Schedule of Pledged Cotton above or attached hereto is free and clear of any and all liens and encumbrances, except warehouseman's liens.)

The Undersigned, in consideration of the making of the loan evidenced by the Producer's Note, do hereby severally waive, relinquish, and surrender all right, title, and interest in and to the cotton described in the Schedule of Pledged Cotton above or attached hereto.

SIGNATURES OF LIENHOLDERS (INCLUDING FEDERAL AGENCIES) AND LANDLORDS

(If there are no lienholders or landlords, insert "NONE.")

______

CLERK'S CERTIFICATE

The undersigned certifies: (1) That he assisted the Producer or his agent in the preparation and execution of this Form A and that the fee charged for such services did not exceed the amount authorized to be charged for such services by Commodity Credit Corporation; (2) that the Producer is personally known to him and his signature on this Form A is genuine; (3) that, to the best of his knowledge and belief, all data entered on this Form A and all representations made by the Producer are true, complete, and correct, and the cotton described in the Schedule of Pledged Cotton above or attached hereto is "eligible cotton" as defined in 1949 C. C. C. Cotton Bulletin 1; and (4) that he delivered to the Producer or his agent the duplicate copy of this Form A.

______ (Signature)

Credit Corporation.

DO NOT USE THIS SPACE

Producer (Print) ______ (Last name) (First name) (Middle initial)

Status ______ (State whether landowner, landlord, tenant, or sharecropper)

Address ______ (Complete address)

Cotton produced in ______ (County) (State)

If Advance Loan was made, Producer's Power of Attorney No.______

SCHEDULE OF PLEDGED COTTON

______ (Name of warehouse) ______ (Address) ______ (Warehouse number)

Notice.—All warehouse-stored cotton securing this note must be in the same warehouse and secured by single-bale receipts. Bale tag and receipt number must agree.

Warehouse Receipt and Bale Tag No.	Date on Which Storage Charges Begin	Date of Official Classification	Compression [1]	Compression Paid [2]	Transportation Code [3]	Bagging [4]	Gross Weight [5]	Reduced From A/C

Number of bales______ All cotton listed is (grade and staple)______ Total gross weight______ Loan value (per pound)______

[1] Enter applicable term "flat" or "S. D." [2] Enter "yes" if paid, "no" if unpaid. [3] Enter "00" if received by wagon, truck or barge; if received by rail, enter code No. of railroad. [4] Enter kind of bagging. [5] If bale is covered with cotton bagging, add 7 pounds to the warehouse receipt weight to obtain the gross weight of the bale to be entered in column "gross weight."

AGREEMENT OF WAREHOUSEMAN

The undersigned warehouseman hereby agrees that the cotton described in the above or attached schedule shall be stored and handled in accordance with the terms and conditions of the Warehouseman's Certificate and Storage Agreement on the reverse side hereof and makes the representations contained in such Warehouseman's Certificate and Storage Agreement with respect to such cotton.

Date______, 19___ ______ (Signature of warehouseman) * ______ (Agent or officer-title)

(This Agreement must not be dated more than 10 days preceding date of Producer's Note nor subsequent to the date of the Note)

PRODUCER'S NOTE

$______ Date______

On or before July 31, 1950, or upon such earlier date as Commodity Credit Corporation may make demand for payment, for value received, the undersigned (hereinafter called "the Producer") promises to pay to the order of ______ Payee, at the office of Commodity Credit Corporation, Washington, D. C. ______ /100 dollars, with interest from the date hereof until paid at the rate of 3 percent a year. The makers and endorsers severally waive presentment for payment, demand, protest, notice of protest, and notice of nonpayment of this note.

This note evidences a loan made available under the 1949 Cotton Loan Program of Commodity Credit Corporation (formulated pursuant to the Agricultural Adjustment Act of 1938, as amended and supplemented) and is secured by warehouse receipts or bills of lading representing the cotton described in the Schedule of Pledged Cotton above or in the schedule attached hereto. The Producer understands and agrees that the loan is made subject to and in consideration of the representations, warranties, and agreements contained in the Loan Agreement on the reverse side hereof and certifies that he has read the Loan Agreement and that he has made the representations, warranties, and agreements contained therein, with full knowledge of the provisions of Section 15(a) of the Commodity Credit Corporation Charter Act*, for the purpose of obtaining the loan, rendering this note eligible for purchase by or discount to Commodity Credit Corporation, an agency of the United States, and inducing such agency to acquire this note.

The Producer requests and directs the payee of this note to make funds available from the proceeds of the loan as follows:

NAME	ADDRESS	AMOUNT
		$
	TOTAL,	$

______ (Witness to producer's signature) ______ (Signature of producer) ______ (Print producer's name)

______ (Witness to Joint-producer's signature) ______ (Signature of Joint-producer or Agent) ______ (Print Joint-producer's or Agent's name)

LIENHOLDER'S WAIVER

(All landlords must sign this lien waiver whether or not they claim liens, unless they have signed the Producer's Note. The Producer, by signing this instrument, certifies that the cotton described in the Schedule of Pledged Cotton above or attached hereto is free and clear of any and all liens and encumbrances, except warehouseman's liens.)

The Undersigned, in consideration of the making of the loan evidenced by the Producer's Note, do hereby severally waive, relinquish, and surrender all right, title, and interest in and to the cotton described in the Schedule of Pledged Cotton above or attached hereto.

SIGNATURES OF LIENHOLDERS (INCLUDING FEDERAL AGENCIES) AND LANDLORDS

(If there are no lienholders or landlords, insert "NONE.")

______

______

CLERK'S CERTIFICATE

The undersigned certifies: (1) That he assisted the Producer or his agent in the preparation and execution of this Form A and that the fee charged for such services did not exceed the amount authorized to be charged for such services by Commodity Credit Corporation; (2) that the Producer is personally known to him and his signature on this Form A is genuine; (3) that, to the best of his knowledge and belief, all data entered on this Form A and all representations made by the Producer are true, complete, and correct, and the cotton described in the Schedule of Pledged Cotton above or attached hereto is "eligible cotton" as defined in 1949 C. C. C. Cotton Bulletin 1; and (4) that he delivered to the Producer or his agent the duplicate copy of this Form A.

______ (Signature)

PAYEE'S ENDORSEMENT

The undersigned payee of the Producer's Note hereby assigns, transfers, and endorses the Producer's Note to Commodity Credit Corporation without recourse.

______ (Date) ______ (Payee—exactly as written in above note) ______ (Title)

* See Reverse Side

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LOAN AGREEMENT

1. The Producer hereby sells, assigns, pledges, and/or hypothecates to the payee of the Producer's Note on the reverse side hereof, (hereinafter called "the note"), and to any subsequent holder thereof, the warehouse receipts or bills of lading representing the cotton described in the Schedule of Pledged Cotton on the reverse side hereof or attached hereto (hereinafter called "the cotton") as collateral security for the payment of the note, plus charges (i. e., all fees, costs, and expenses incident to insuring, storing, transporting, compressing, conditioning, marketing, satisfying liens and encumbrances, or otherwise handling or dealing with such cotton for the purpose of protecting the interest therein of the Producer or a holder of the note) and interest.

2. The Producer's remaining right, title, and interest in the cotton and his right to redeem the cotton shall not be assignable or transferable to any third person except with the approval of and in the manner prescribed by Commodity Credit Corporation.

3. For the purpose of obtaining the loan, evidenced by the note, rendering the note eligible for purchase or discount by Commodity Credit Corporation, an agency of the United States, and inducing such agency to acquire the note, the Producer, with full knowledge of the provisions of Section 15 (a) of the Commodity Credit Corporation Charter Act represents and warrants to all holders of the note as follows:

(*a*) That the cotton is in existence, is in good condition, and is not false-packed, water-packed, reginned or repacked, that he produced the cotton in the capacity (i. e., landlord, landowner, tenant, or sharecropper) stated on the reverse side hereof, and that the county and State in which the cotton was produced are correctly stated on the reverse side hereof.

(*b*) That he has the legal right to pledge the cotton as collateral security for the loan; and that the benefits of the loan will accrue solely to himself and any tenants and sharecroppers having an interest in the cotton or its proceeds and have not been transferred to any other person by way of assignment, sale, or option.

(*c*) That if he is a landlord or landowner, he has not acquired the cotton directly or indirectly from a share tenant or sharecropper and has not received it in payment of fixed or standing rent; and that if he produced it in the capacity of landlord, share tenant or sharecropper, it is his separate share of the crop unless he is a landlord and is tendering cotton in which both he and a share tenant or sharecropper have an interest.

(*d*) That, if he is a share tenant or sharecropper and the note is not signed jointly by himself and his landlord, no landlord has an interest in the cotton.

(*e*) That he has read the 1949 Cotton Loan Bulletin (1949 C. C. C. Cotton Bulletin 1) and is eligible, under such Bulletin, for a loan on the cotton.

(*f*) That the cotton is free and clear of all liens and encumbrances, except warehouseman's liens as specified in the Warehouseman's Certificate and Storage Agreement below; and that all other persons who claimed to have any liens or encumbrances on the cotton (except the warehouseman), and all landlords, whether or not they claimed landlord's liens on the cotton, have executed the Lienholder's Waiver on the reverse side hereof.

(*g*) That, to the best of his knowledge and belief, all the data and information on the reverse side hereof are true, complete, and correct.

4. The Producer agrees that, if any tenant or sharecropper has an interest in the cotton, such tenant or sharecropper will be paid his pro rata share of the proceeds of the loan and his pro rata share of any additional proceeds received from the cotton.

5. All holders of the note shall look solely to the cotton for satisfaction of the loan unless the Producer has made a fraudulent representation in obtaining the loan. In the event that the Producer has made such a fraudulent representation, he shall be and remain personally liable to the holder of the note for the payment of the loan, plus interest and charges, for any amount which any holder of the note pays because of such fraudulent representation in order to protect or retain his interest in the cotton, and for the amount of any other loss or liability incurred by any holder of the note as a result of such fraudulent representation.

6. If Commodity Credit Corporation, or any other Federal agency, shall become the holder of the note, it may, before or after maturity, move the cotton from one storage point to another, subject to the provisions of the act of June 16, 1938 (7 U. S. C. 1383a); compress the cotton; store the cotton separately, in block or otherwise; insure or reinsure the cotton against any risk; or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the Producer or the holder; release, substitute, and obtain any and all instruments or documents; and pay any fees, costs, or expenses as may in any way be necessary or appropriate in taking any action authorized by this section. Any fees, costs, and expenses paid by the holder pursuant to this section shall be charges against the cotton. Such charges, plus interest thereon at the rate of 3 per centum per annum, shall be paid by the Producer upon redemption of the cotton or, if the cotton is not redeemed, shall be paid out of the proceeds received by the holder from the disposition of the cotton. This section shall be construed as authorizing but not requiring the holder to do any of the things specified herein, and the holder shall not be liable to any person whatsoever for any obligation which has accrued or may accrue under or in connection with any contract to which the holder is not a party signatory, including obligations under any such contract which may accrue as a result of the shipment or other handling of the cotton pursuant to the authority contained herein.

7. Upon the maturity and nonpayment of the note, and in the event that the note is held by Commodity Credit Corporation or any other Federal agency, the holder is authorized without notice to the Producer to pool (one or more producers' pools may be created) all or any part of the cotton with any other cotton held under generally similar loan agreements, and is further authorized, whether or not the cotton is pooled, to sell, assign, transfer, and deliver the cotton, or documents evidencing title thereto, at such time, in such manner, for cash or upon such terms and conditions as the holder may determine, at any cotton exchange, or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and, upon such sale, the holder may become the purchaser of the whole or any part of such cotton.

8. In the event that the cotton is disposed of other than through a producers' pool, any overplus remaining from the proceeds received therefrom, after deducting from such proceeds the amount of the loan, charges, and interest, shall be paid to the Producer.

9. In the event that the cotton becomes a part of a producers' pool created by Commodity Credit Corporation or other Federal agency, the Producer shall not thereafter have the right to redeem the cotton by payment of the loan or otherwise. Proceeds from cotton included in the pool shall be applied against the loans and charges on such cotton and the interest on such loans and charges in the same proportion as the unpaid balance of such loans and charges bears to the total amount of interest outstanding on such loans and charges. Upon liquidation of all cotton in the pool, any overplus remaining from the proceeds from such cotton after satisfaction of the expenses of conducting the pool, the total amount paid out with respect to such cotton (including the total amount of the loans and charges thereon), and interest shall be prorated among the producers whose cotton was included in the pool in proportion to the respective amounts of the loans made to the producers on such cotton.

10. Any amounts payable to the Producer pursuant to section 8 or 9 hereof shall be paid to him or his personal representative without right of assignment to or substitution of any other person.

11. The Producer understands and agrees that the making of loans pursuant to this 1949 Cotton Producer's Note and Loan Agreement and the inclusion of the cotton in a producers' pool and the liquidation of such pool pursuant to sections 7 and 9 hereof constitute integral parts of a national program designed to protect the interests of producers and consumers by providing for a continuous and stable supply of agricultural commodities for domestic production adequate to meet consumers' demands at prices fair to both producers and consumers. In pursuance of such program, Commodity Credit Corporation or other Federal agency shall have the right to treat pooled cotton as a reserve supply to be marketed under such sales policies as such Corporation or agency determines will promote orderly marketing, protect the interests of producers and consumers, and not unduly impair the market for the current crop of the commodity, even though part or all of such cotton is disposed of under such policies at prices less than the current domestic price for such commodity.

12. The Producer further warrants for the benefit of any holder of the note, other than the payee, that he has no defense to the note or set-off or counterclaim against the payee; that none will be claimed which may hereafter arise against any prior party; and that in case of any judicial proceedings on the note by any such holder he hereby waives the right to any and all defenses, counterclaims, or set-offs against any and all prior parties, except as provided in section 5 hereof.

13. Unless the note is made payable to Commodity Credit Corporation, the Producer represents that he has received from the payee the full amount thereof, without any deduction for interest, commission, storage, insurance, or other charge (except the authorized clerk's fee in case an employee of the payee has executed the Clerk's Certificate).

WAREHOUSEMAN'S CERTIFICATE AND STORAGE AGREEMENT

All charges on the cotton listed in the schedule on the reverse side hereof or attached hereto (hereinafter called "the cotton") are paid to the dates of the warehouse receipts representing the cotton. The cotton is in existence, has been examined and bears no visible evidence of being false-packed or water-packed, is not compressed to high density, is undamaged, and is and will be kept under cover within a structure enclosed in such manner that the cotton is adequately protected from weather damage. All the cotton which was in the open after it was received is clean and is in good condition. The cotton is insured against loss or damage by fire for the full market value (if the cotton is compressed, its market value shall be the market value of flat cotton plus compression charges) at the time and place of loss under a policy or policies providing coverage similar to that afforded under the standard fire policy of the State in which the cotton is stored and will be kept so insured so long as the warehouse receipts therefor are outstanding, unless the cotton comes under a storage agreement between the warehouseman and the holder allowing the warehouseman to cancel his insurance on the cotton. From the dates of the warehouse receipts through July 31, 1950, all charges on the cotton for storage, insurance, picking out by tag numbers, and loading according to custom into cars or trucks, shall be at the rate of 33 cents per bale per month or fraction thereof for cotton stored in warehouses operating compress facilities, and at the rate of 38 cents per bale per month or fraction thereof for cotton stored in warehouses not operating compress facilities, or the warehouseman's established tariff on other than Commodity Credit Corporation loan cotton, whichever is less. All other charges on the cotton, including compression charges, and flat delivery charges on cotton moved from a warehouse operating compress facilities without payment of compression charges, will be at the rates provided in the warehouseman's established tariff in effect at the time the service is ordered performed; provided that no charge may be made with respect to the cotton that is not applicable to all cotton stored by the warehouseman, except that the warehouseman may make a charge not to exceed 25 cents per bale for transmitting samples to the designated classing office, postage, verifying the information contained in the Schedule of Pledged Cotton, and executing loan papers, if such charges are included in the warehouseman's tariff; and provided further that in no event shall such 25 cent charge, a service charge, or charges for receiving, tagging, weighing and sampling on arrival, or storage of samples be collected from the holder of the note or a purchaser of the cotton. No charge of any kind whatsoever will be paid with respect to any of the cotton compressed to high density without the written authority of Commodity Credit Corporation. Representative samples from both sides of each bale of the cotton were drawn by the undersigned warehouseman and delivered or forwarded for classing to a Board of Cotton Examiners of the U. S. Department of Agriculture, except that a sample has not been drawn from any bale of the cotton and delivered or forwarded to a Board of Cotton Examiners, except for review, if the warehouseman knows or has reason to believe that the producer has a Form 1 Classification Memorandum covering such bale. The grade and staple shown in the above or attached schedule is the grade and staple reported to the warehouseman by the Board of Cotton Examiners or shown on the Form 1 Classification Memorandum. The warehouseman agrees to keep such official classification records until notified by Commodity Credit Corporation that such records may be destroyed. In the event that the cotton is pooled by Commodity Credit Corporation or the loan evidenced by the Producer's Note is extended or carried in past due status by Commodity Credit Corporation after July 31, 1950, the rates quoted herein will remain in effect until terminated by Commodity Credit Corporation or the warehouseman at the end of any month by giving the other at least 30 days' notice, until 15 days after the cotton is sold (Commodity Credit Corporation shall promptly notify the warehouseman of the date of the sale), or until the cotton comes under another storage agreement between the warehouseman and Commodity Credit Corporation, whichever is earlier. If the cotton is redeemed from the loan by the producer or the purchaser of his equity or the cotton is sold by Commodity Credit Corporation, charges provided herein shall be applicable for services rendered during the period extending from the dates of the warehouse receipts to and including 15 days after such redemption or sale, and the warehouseman shall not charge the holders of the warehouse receipts representing such cotton for services rendered for that period an amount in excess of that computed in accordance with this agreement. Commodity Credit Corporation may, by agents or otherwise, inspect the cotton, the warehouse, and the records of the warehouse at any time. The warehouseman agrees that if the cotton is ordered shipped by Commodity Credit Corporation for the purpose of reconcentration or otherwise, shipments will be made promptly and storage charges will stop on receipt of shipping instructions and surrender of the warehouse receipts unless the cotton is shipped within a reasonable time, as determined by Commodity Credit Corporation. The representations and agreements set out above are made for the purpose of inducing the making of a loan evidenced by the Producer's Note and of inducing Commodity Credit Corporation to acquire such note.

conditioning, marketing, satisfying liens and encumbrances, or otherwise handling or dealing with such cotton for the purpose of protecting the interest therein of the Producer or a holder of the note) and interest.

2. The Producer's remaining right, title, and interest in the cotton and his right to redeem the cotton shall not be assignable or transferable to any third person except with the approval of and in the manner prescribed by Commodity Credit Corporation.

3. For the purpose of obtaining the loan, evidenced by the note, rendering the note eligible for purchase or discount by Commodity Credit Corporation, an agency of the United States, and inducing such agency to acquire the note, the Producer, with full knowledge of the provisions of Section 15 (a) of the Commodity Credit Corporation Charter Act represents and warrants to all holders of the note as follows:

(*a*) That the cotton is in existence, is in good condition, and is not false-packed, water-packed, reginned or repacked, that he produced the cotton in the capacity (i. e., landlord, landowner, tenant, or sharecropper) stated on the reverse side hereof, and that the county and State in which the cotton was produced are correctly stated on the reverse side hereof.

(*b*) That he has the legal right to pledge the cotton as collateral security for the loan; and that the benefits of the loan will accrue solely to himself and any tenants and sharecroppers having an interest in the cotton or its proceeds and have not been transferred to any other person by way of assignment, sale, or option.

(*c*) That if he is a landlord or landowner, he has not acquired the cotton directly or indirectly from a share tenant or sharecropper and has not received it in payment of fixed or standing rent; and that if he produced it in the capacity of landlord, share tenant or sharecropper, it is his separate share of the crop unless he is a landlord and is tendering cotton in which both he and a share tenant or sharecropper have an interest.

(*d*) That, if he is a share tenant or sharecropper and the note is not signed jointly by himself and his landlord, no landlord has an interest in the cotton.

(*e*) That he has read the 1949 Cotton Loan Bulletin (1949 C. C. C. Cotton Bulletin 1) and is eligible, under such Bulletin, for a loan on the cotton.

(*f*) That the cotton is free and clear of all liens and encumbrances, except warehouseman's liens as specified in the Warehouseman's Certificate and Storage Agreement below; and that all other persons who claimed to have any liens or encumbrances on the cotton (except the warehouseman), and all landlords, whether or not they claimed landlord's liens on the cotton, have executed the Lienholder's Waiver on the reverse side hereof.

(*g*) That, to the best of his knowledge and belief, all the data and information on the reverse side hereof are true, complete, and correct.

4. The Producer agrees that, if any tenant or sharecropper has an interest in the cotton, such tenant or sharecropper will be paid his pro rata share of the proceeds of the loan and his pro rata share of any additional proceeds received from the cotton.

5. All holders of the note shall look solely to the cotton for satisfaction of the loan unless the Producer has made a fraudulent representation in obtaining the loan. In the event that the Producer has made such a fraudulent representation, he shall be and remain personally liable to the holder of the note for the payment of the loan, plus interest and charges, for any amount which any holder of the note pays because of such fraudulent representation in order to protect or retain his interest in the cotton, and for the amount of any other loss or liability incurred by any holder of the note as a result of such fraudulent representation.

6. If Commodity Credit Corporation, or any other Federal agency, shall become the holder of the note, it may, before or after maturity, move the cotton from one storage point to another, subject to the provisions of the act of June 16, 1938 (7 U. S. C. 1383a); compress the cotton; store the cotton separately, in block or otherwise; insure or reinsure the cotton against any risk; or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the Producer or the holder; release, substitute, and obtain any and all instruments or documents; and pay any fees, costs, or expenses as may in any way be necessary or appropriate in taking any action authorized by this section. Any fees, costs, and expenses paid by the holder pursuant to this section shall be charges against the cotton. Such charges, plus interest thereon at the rate of 3 per centum per annum, shall be paid by the Producer upon redemption of the cotton or, if the cotton is not redeemed, shall be paid out of the proceeds received by the holder from the disposition of the cotton. This section shall be construed as authorizing but not requiring the holder to do any of the things specified herein, and the holder shall not be liable to any person whatsoever for any obligation which has accrued or may accrue under or in connection with any contract to which the holder is not a party signatory, including obligations under any such contract which may accrue as a result of the shipment or other handling of the cotton pursuant to the authority contained herein.

7. Upon the maturity and nonpayment of the note, and in the event that the note is held by Commodity Credit Corporation or any other Federal agency, the holder is authorized without notice to the Producer to pool (one or more producers' pools may be created) all or any part of the cotton with any other cotton held under generally similar loan agreements, and is further authorized, whether or not the cotton is pooled, to sell, assign, transfer, and deliver the cotton, or documents evidencing title thereto, at such time, in such manner, for cash or upon such terms and conditions as the holder may determine, at any cotton exchange, or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and, upon such sale, the holder may become the purchaser of the whole or any part of such cotton.

8. In the event that the cotton is disposed of other than through a producers' pool, any overplus remaining from the proceeds received therefrom, after deducting from such proceeds the amount of the loan, charges, and interest, shall be paid to the Producer.

9. In the event that the cotton becomes a part of a producers' pool created by Commodity Credit Corporation or other Federal agency, the Producer shall not thereafter have the right to redeem the cotton by payment of the loan or otherwise. Proceeds from cotton included in the pool shall be applied against the loans and charges on such cotton and the interest on such loans and charges in the same proportion as the unpaid balance of such loans and charges bears to the total amount of interest outstanding on such loans and charges. Upon liquidation of all cotton in the pool, any overplus remaining from the proceeds from such cotton after satisfaction of the expenses of conducting the pool, the total amount paid out with respect to such cotton (including the total amount of the loans and charges thereon), and interest shall be prorated among the producers whose cotton was included in the pool in proportion to the respective amounts of the loans made to the producers on such cotton.

10. Any amounts payable to the Producer pursuant to section 8 or 9 hereof shall be paid to him or his personal representative without right of assignment to or substitution of any other person.

11. The Producer understands and agrees that the making of loans pursuant to this 1949 Cotton Producer's Note and Loan Agreement and the inclusion of the cotton in a producers' pool and the liquidation of such pool pursuant to sections 7 and 9 hereof constitute integral parts of a national program designed to protect the interests of producers and consumers by providing for a continuous and stable supply of agricultural commodities for domestic production adequate to meet consumers' demands at prices fair to both producers and consumers. In pursuance of such program, Commodity Credit Corporation or other Federal agency shall have the right to treat pooled cotton as a reserve supply to be marketed under such sales policies as such Corporation or agency determines will promote orderly marketing, protect the interests of producers and consumers, and not unduly impair the market for the current crop of the commodity, even though part or all of such cotton is disposed of under such policies at prices less than the current domestic price for such commodity.

12. The Producer further warrants for the benefit of any holder of the note, other than the payee, that he has no defense to the note or set-off or counterclaim against the payee; that none will be claimed which may hereafter arise against any prior party; and that in case of any judicial proceedings on the note by any such holder he hereby waives the right to any and all defenses, counterclaims, or set-offs against any and all prior parties, except as provided in section 5 hereof.

13. Unless the note is made payable to Commodity Credit Corporation, the Producer represents that he has received from the payee the full amount thereof, without any deduction for interest, commission, storage, insurance, or other charge (except the authorized clerk's fee in case an employee of the payee has executed the Clerk's Certificate).

WAREHOUSEMAN'S CERTIFICATE AND STORAGE AGREEMENT

All charges on the cotton listed in the schedule on the reverse side hereof or attached hereto (hereinafter called "the cotton") are paid to the dates of the warehouse receipts representing the cotton. The cotton is in existence, has been examined and bears no visible evidence of being false-packed or water-packed, is not compressed to high density, is undamaged, and is and will be kept under cover within a structure enclosed in such manner that the cotton is adequately protected from weather damage. All the cotton which was in the open after it was received is clean and is in good condition. The cotton is insured against loss or damage by fire for the full market value (if the cotton is compressed, its market value shall be the market value of flat cotton plus compression charges) at the time and place of loss under a policy or policies providing coverage similar to that afforded under the standard fire policy of the State in which the cotton is stored and will be kept so insured so long as the warehouse receipts therefor are outstanding, unless the cotton comes under a storage agreement between the warehouseman and the holder allowing the warehouseman to cancel his insurance on the cotton. From the dates of the warehouse receipts through July 31, 1950, all charges on the cotton for storage, insurance, picking out by tag numbers, and loading according to custom into cars or trucks, shall be at the rate of 33 cents per bale per month or fraction thereof for cotton stored in warehouses operating compress facilities, and at the rate of 38 cents per bale per month or fraction thereof for cotton stored in warehouses not operating compress facilities, or the warehouseman's established tariff on other than Commodity Credit Corporation loan cotton, whichever is less. All other charges on the cotton, including compression charges, and flat delivery charges on cotton moved from a warehouse operating compress facilities without payment of compression charges, will be at the rates provided in the warehouseman's established tariff in effect at the time the service is ordered performed; provided that no charge may be made with respect to the cotton that is not applicable to all cotton stored by the warehouseman, except that the warehouseman may make a charge not to exceed 25 cents per bale for transmitting samples to the designated classing office, postage, verifying the information contained in the Schedule of Pledged Cotton, and executing loan papers, if such charges are included in the warehouseman's tariff; and provided further that in no event shall such 25 cent charge, a service charge, or charges for receiving, tagging, weighing and sampling on arrival, or storage of samples be collected from the holder of the note or a purchaser of the cotton. No charge of any kind whatsoever will be paid with respect to any of the cotton compressed to high density without the written authority of Commodity Credit Corporation. Representative samples from both sides of each bale of the cotton were drawn by the undersigned warehouseman and delivered or forwarded for classing to a Board of Cotton Examiners of the U. S. Department of Agriculture, except that a sample has not been drawn from any bale of the cotton and delivered or forwarded to a Board of Cotton Examiners, except for review, if the warehouseman knows or has reason to believe that the producer has a Form 1 Classification Memorandum covering such bale. The grade and staple shown in the above or attached schedule is the grade and staple reported to the warehouseman by the Board of Cotton Examiners or shown on the Form 1 Classification Memorandum. The warehouseman agrees to keep such official classification records until notified by Commodity Credit Corporation that such records may be destroyed. In the event that the cotton is pooled by Commodity Credit Corporation or the loan evidenced by the Producer's Note is extended or carried in past due status by Commodity Credit Corporation after July 31, 1950, the rates quoted herein will remain in effect until terminated by Commodity Credit Corporation or the warehouseman at the end of any month by giving the other at least 30 days' notice, until 15 days after the cotton is sold (Commodity Credit Corporation shall promptly notify the warehouseman of the date of the sale), or until the cotton comes under another storage agreement between the warehouseman and Commodity Credit Corporation, whichever is earlier. If the cotton is redeemed from the loan by the producer or the purchaser of his equity or the cotton is sold by Commodity Credit Corporation, charges provided herein shall be applicable for services rendered during the period extending from the dates of the warehouse receipts to and including 15 days after such redemption or sale, and the warehouseman shall not charge the holders of the warehouse receipts representing such cotton for services rendered for that period an amount in excess of that computed in accordance with this agreement. Commodity Credit Corporation may, by agents or otherwise, inspect the cotton, the warehouse, and the records of the warehouse at any time. The warehouseman agrees that if the cotton is ordered shipped by Commodity Credit Corporation for the purpose of reconcentration or otherwise, shipments will be made promptly and storage charges will stop on receipt of shipping instructions and surrender of the warehouse receipts unless the cotton is shipped within a reasonable time, as determined by Commodity Credit Corporation. The representations and agreements set out above are made for the purpose of inducing the making of a loan evidenced by the Producer's Note and of inducing Commodity Credit Corporation to acquire such note.

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*Section 15 (a) of the Commodity Credit Corporation Charter Act (62 Stat. 1070) provides a fine of not more than $10,000 or not more than five years' imprisonment for making any statement knowing it to be false for the purpose of influencing the action of the Corporation or of obtaining money under any Act applicable to the Corporation.

C. C. C. Cotton Form D
(6-9-49)
U. S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION

Budget Bureau.
Clearance waived.

ORIGINAL

LENDING AGENCY AGREEMENT

COVERING LOANS ON COTTON OF THE ________ CROP
(Year)

THIS AGREEMENT, made and entered into as of the ____________ day of ____________________, 19____, by and between Commodity Credit Corporation (hereinafter referred to as CCC), an agency of the United States, and

____
(Lending agency)

____
(Address)

____

(hereinafter referred to as the "Lending Agency").

WITNESSETH:

WHEREAS CCC has undertaken a Cotton Loan Program for cotton of the crop specified above and has issued a Cotton Loan Bulletin (C. C. C. Cotton Bulletin 1, hereinafter referred to as the "Bulletin") for such program setting out the terms and conditions under which producers may obtain loans secured by cotton of such crop, which Bulletin and any amendments and supplements thereto are hereby made a part of this agreement and are to apply hereto the same as though they were expressly rewritten and included herein; and

WHEREAS CCC desires to facilitate completion of such loans and the Lending Agency desires to make such loans:

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree for themselves, their successors, and their assigns, as follows:

1. Upon execution of this Agreement by the Lending Agency and CCC, the Lending Agency may make loans in accordance with the provisions of the Bulletin and this Agreement to producers of cotton of the crop specified above. Such loans shall be made only upon tender by the producers of (*a*) duly executed Cotton Producer's Note and Loan Agreements (C. C. C. Cotton Form A) and warehouse receipts representing the cotton and meeting the requirements of the Bulletin, (*b*) duly executed Cotton Producer's Notes (C. C. C. Cotton Form E) and copies of duly executed and recorded Cotton Chattel Mortgages (C. C. C. Cotton Form F) covering the cotton, or (*c*) duly executed Cotton Producer's Note and Loan Agreements (C. C. C. Cotton Form A), order bills of lading (original and one copy) representing the cotton and covering the shipment of the cotton by Receiving Agencies approved by CCC, and (if the Receiving Agency is not a warehouseman) Weight and Condition Certificates in the form specified by CCC covering the cotton. C. C. C. Cotton Forms A and E will hereinafter be referred to as "notes." Such notes shall be used by the Lending Agency only in making loans under this Agreement. The date of each note must be the date on which the Lending Agency makes full disbursement of the loan proceeds. Full disbursement of the loan proceeds must be made to the producer or in the manner directed by the producer in the space provided in the notes. Each note must state the name of the producer, clerk, or other recipients of the loan proceeds, and the amount paid to each, accounting for the full proceeds of the loan. The Lending Agency shall not make a loan on cotton pursuant to this Agreement if, to its knowledge, the cotton is damaged, destroyed, or impaired, is subject to any prior lien or encumbrance (except warehouseman's liens), or is otherwise ineligible for a loan under the Bulletin. The Lending Agency shall not make any deduction for interest, commission, exchange, or other charges from the amount of any loan hereunder. Loans shall not be made upon cotton covered by order bills of lading until after the Lending Agency receives notice from CCC that it may make such loans, and the Lending Agency shall cease making such loans upon receipt of notice from CCC.

2. The Lending Agency shall tender all notes evidencing loans which it has made in accordance with the provisions of section 1 hereof, together with the required supporting documents, to the New Orleans PMA Commodity Office, Masonic Temple Building, New Orleans 12, La., unless otherwise directed by CCC, within 15 days after the dates of such notes. Such tender shall be made by a duly executed Lending Agency's Letter of Transmittal (C. C. C. Cotton Form C), in quadruplicate, indicating whether the notes are transmitted for purchase or for pooling. All of the notes tendered on any one letter of transmittal must be secured by cotton stored in the same custodial district, as defined in the Bulletin. Forty notes shall be submitted on each letter of transmittal except when fewer notes are listed in order that they may be tendered within 15 days after execution or where the Lending Agency draws sight-drafts under section 3 hereof. Notes should be listed in the order of their dates. Notes secured by warehouse receipts, notes secured by order bills of lading, and notes secured by chattel mortgages shall be submitted on separate letters of transmittal; and notes covering upland and American-Egyptian cotton shall be submitted on separate letters of transmittal. One copy of the letter of transmittal will be returned to the Lending Agency and will constitute a receipt for the notes. All notes tendered hereunder will be examined by CCC and notes found to be unacceptable will be returned. Notes returned will be accepted if retendered in acceptable form.

3. If notes tendered hereunder are tendered for purchase, CCC shall, as soon as practicable, pay to the Lending Agency the face value of the notes accepted plus interest thereon at the rate of 1½ percent per annum from the respective dates of such notes to the date of payment of the purchase price by CCC. The Lending Agency, subject to such instructions and requirements as CCC may hereafter from time to time give to the Lending Agency, may obtain immediate payment for notes it desires to sell by drawing sight drafts on CCC payable at a Federal Reserve Bank approved by CCC in amounts specified in such instructions; provided, that the Lending Agency shall previously have been approved by CCC as eligible to draw such drafts on CCC. The Lending Agency shall reimburse CCC for any notes for which the Lending Agency receives payment by drawing drafts on CCC and which are rejected by CCC or shall accept, under trust receipt, such notes as are returned to it by CCC for correction and accomplish any necessary corrections. The Lending Agency agrees that CCC may, if it desires, draw on the Lending Agency for reimbursement to CCC for any notes rejected.

4. If notes tendered hereunder are tendered for pooling, the notes which are accepted shall be placed in a pool, which shall be operated as follows:

(*a*) A separate pool shall be established in each custodial district, as defined in the Bulletin, for the notes secured by cotton stored in that district, and the custodial office for the district shall act as custodian of the pool.

(*b*) The custodial office shall issue to the approved Lending Agency designated in the letter of transmittal on which the notes were tendered a Certificate of Interest (C. C. C. Cotton Form H, hereinafter referred to as a "certificate") in a face amount equal to the face amounts of the notes deposited, evidencing the deposit of such notes in the pool pursuant to this Agreement. The face amount of the certificate, less payments thereon, shall constitute the value of the certificate, which shall bear interest from the date thereof at the rate of 1½ percent per annum, payable at the time and upon the amount of each payment made upon the certificate.

[OVER]

(*c*) The date of the certificate shall be the average date of all the notes covered by the certificate weighted in accordance with the amounts of such notes.

(*d*) The custodial office, upon issuing a certificate, shall act as custodian thereof for the certificate holder until it is retired or purchased by CCC and shall, as promptly as possible after issuing the certificate, furnish the certificate holder with a copy thereof. The custodial office shall enter on the reverse side of the certificate all payments made thereon. When any certificate is retired by payment to the holder of the value thereof, plus interest, the certificate shall be canceled. Canceled certificates shall be retained by the custodial office.

(*e*) A certificate may be transferred only upon the following conditions, except for transfers to and from a Federal Reserve Bank. A transfer may be made only to another approved lending agency. Only two such transfers of the certificate may be made. A transfer may be made only by an Assignment of Certificate of Interest (C. C. C. Cotton Form I) and will be effective only upon the receipt and acceptance of such form by the custodial office. An assignment received during the first 10 days of any month will not be effective until the end of such period, and any payment upon the certificate during such period will be made to the transferor rather than the transferee.

If the certificate holder is a member bank of the Federal Reserve System, any number of transfers of the certificate may also be made to and from a Federal Reserve Bank which has entered into an agreement with CCC authorizing the transfer of certificates to the Federal Reserve Bank. Any such transfer will be effective upon receipt by the custodial office of telegraphic advice from the Federal Reserve Bank that the certificate has been so assigned, provided that such advice shall be subsequently confirmed by the submission of a duly executed Assignment of Certificate of Interest, and provided further that payments made on certificates during the first 10 days of any calendar month will be made without regard for any assignment of which advice is received during the same 10-day period.

(*f*) CCC may, and shall upon demand by the certificate holder, purchase any outstanding certificate at any time by paying to the certificate holder the value thereof plus accrued interest. Upon such purchase the certificate shall be canceled by the custodial office, but CCC shall participate in the pool to the same extent as if the certificate had not been canceled.

(*g*) CCC may deposit in the pool any notes held by CCC or other documents evidencing loans made by CCC under such program. No certificate shall be issued to CCC to evidence the deposit of such notes and documents, but CCC shall participate in the pool in the same manner as if a certificate had been issued.

(*h*) The proceeds obtained each month through collection or other appropriate credits to the principal amounts of the notes deposited in the pool and any undistributed proceeds from previous months, shall be divided during the 10-day period following the end of the month between CCC and certificate holders in the same proportion as the value of CCC's interest in the pool bears to the total value of all certificates outstanding on the last day of the month; *Provided, however,* That such distribution shall not be made if CCC determines that such action is impracticable. That part of the pool proceeds which is to be paid to the certificate holders shall be divided among them in proportion to the total value of the certificates held by each certificate holder, and such payments shall be credited by the custodial office against the certificates held by each certificate holder which have been outstanding for the longest time, except that payments to a Federal Reserve Bank shall be credited on certificates held by the Federal Reserve Bank in accordance with the directions of the Federal Reserve Bank; *Provided, however,* That if such credit would reduce the value of any certificate to less than $100, the payment to the certificate holder may be increased by an amount sufficient to retire the certificate; And *provided further,* That the payment to any certificate holder will not exceed the total value of the certificates which he holds.

(*i*) Any proceeds, notes, and other loan documents remaining in the pool after all of the certificates have been retired shall become the property of CCC.

(*j*) If any certificates have not been retired upon final liquidation of the pool, CCC shall pay to the holders of the certificates the value thereof, plus interest.

5. The Lending Agency shall, upon receipt of instructions from CCC and in accordance with such instructions, deliver warehouse receipts representing cotton on which loans have been made in accordance with the provisions of section 1 hereof, to the warehouse in which the cotton is stored and secure from the warehouseman a receipt, in duplicate, in the form specified by Commodity Credit Corporation for each group of warehouse receipts delivered to the warehouseman. After delivery of such warehouse receipts to the warehouseman, the Lending Agency shall tender the notes evidencing the loans in accordance with the provisions of section 2 hereof, except that they shall be accompanied by the original receipt signed by the warehouseman in lieu of the warehouse receipts and shall be tendered on a separate Lending Agency's Letter of Transmittal from other notes, the duplicate receipt to be retained by the Lending Agency. The Lending Agency shall discontinue the delivery of warehouse receipts to the warehouseman hereunder when instructed to do so by CCC.

6. If a producer desires to obtain a loan hereunder on C. C. C. Cotton Form A prior to the time the loan value of the cotton can be determined and if the producer desires to obtain interim financing from the Lending Agency, the Lending Agency may make a loan (hereinafter called the "advance loan") to the producer on forms and in amounts agreed upon by the Lending Agency and the producer and obtain a duly executed Producer's Power of Attorney (C. C. C. Cotton Form J) from the producer. Advance loans shall not be made to producers whose names appear on the lists of persons indebted to the United States furnished by the county committee unless the producer furnishes evidence that the indebtedness has been satisfied. The duplicate copy of the power of attorney shall be delivered to the producer. On or before the date such loan is made, samples must have been drawn from the cotton and submitted to a Board of Cotton Examiners for classification, or, if the cotton has not arrived at the warehouse, the warehouseman must have been instructed to sample the cotton upon receipt and forward the samples for classification. For the cotton to be eligible for tender to CCC, on or before September 1, 1949, within 15 days after the dates of the classification certificates covering such cotton, or within 15 days after the dates of the warehouse receipts, whichever is later, the Lending Agency must (as provided in the Producer's Power of Attorney), make a loan or loans to the producer under section 1 hereof on all of such cotton which is eligible for a loan, prepare and execute on behalf of the producer Cotton Producer's Note and Loan Agreements evidencing such loans, apply the proceeds of the notes on the advance loan, and disburse any remaining proceeds of the notes in accordance with section 1 hereof. All such notes shall be tendered in accordance with section 2 hereof and shall be accompanied by the applicable Producer's Powers of Attorney. Such notes shall be transmitted on separate letters of transmittal. The Lending Agency shall not obtain a power of attorney on any other form authorizing the Lending Agency to execute Cotton Producer's Note and Loan Agreements on behalf of a producer to whom it makes a private loan.

7. In any case in which the Lending Agency has actual knowledge at the time a loan is made that the borrower is not eligible for a loan hereunder or has made a fraudulent representation in obtaining the loan, the lending Agency shall be liable for any loss incurred as a result of the making of such loan. Tendering the notes evidencing such loan to CCC, an agency of the United States, will also make the Lending Agency or its employees liable to criminal prosecution under 18 U. S. C. 287, 1001, and suit under 31 U. S. C. 231.

8. The Corporation shall have the right to terminate this Agreement by giving the Lending Agency notice in writing, but such termination shall not affect the rights and obligations of the parties hereto with respect to loans made by the lending agency prior to such termination. Upon such termination, the Lending Agency shall cease to make loans hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date

ficate may be made. A transfer may be made only by an Assignment of Certificate of Interest (C. C. C. Cotton Form I) and will be effective only upon the receipt and acceptance of such form by the custodial office. An assignment received during the first 10 days of any month will not be effective until the end of such period, and any payment upon the certificate during such period will be made to the transferor rather than the transferee.

If the certificate holder is a member bank of the Federal Reserve System, any number of transfers of the certificate may also be made to and from a Federal Reserve Bank which has entered into an agreement with CCC authorizing the transfer of certificates to the Federal Reserve Bank. Any such transfer will be effective upon receipt by the custodial office of telegraphic advice from the Federal Reserve Bank that the certificate has been so assigned, provided that such advice shall be subsequently confirmed by the submission of a duly executed Assignment of Certificate of Interest, and provided further that payments made on certificates during the first 10 days of any calendar month will be made without regard for any assignment of which advice is received during the same 10-day period.

(*f*) CCC may, and shall upon demand by the certificate holder, purchase any outstanding certificate at any time by paying to the certificate holder the value thereof plus accrued interest. Upon such purchase the certificate shall be canceled by the custodial office, but CCC shall participate in the pool to the same extent as if the certificate had not been canceled.

(*g*) CCC may deposit in the pool any notes held by CCC or other documents evidencing loans made by CCC under such program. No certificate shall be issued to CCC to evidence the deposit of such notes and documents, but CCC shall participate in the pool in the same manner as if a certificate had been issued.

(*h*) The proceeds obtained each month through collection or other appropriate credits to the principal amounts of the notes deposited in the pool and any undistributed proceeds from previous months, shall be divided during the 10-day period following the end of the month between CCC and certificate holders in the same proportion as the value of CCC's interest in the pool bears to the total value of all certificates outstanding on the last day of the month; *Provided, however,* That such distribution shall not be made if CCC determines that such action is impracticable. That part of the pool proceeds which is to be paid to the certificate holders shall be divided among them in proportion to the total value of the certificates held by each certificate holder, and such payments shall be credited by the custodial office against the certificates held by each certificate holder which have been outstanding for the longest time, except that payments to a Federal Reserve Bank shall be credited on certificates held by the Federal Reserve Bank in accordance with the directions of the Federal Reserve Bank; *Provided, however,* That if such credit would reduce the value of any certificate to less than $100, the payment to the certificate holder may be increased by an amount sufficient to retire the certificate; And *provided further,* That the payment to any certificate holder will not exceed the total value of the certificates which he holds.

(*i*) Any proceeds, notes, and other loan documents remaining in the pool after all of the certificates have been retired shall become the property of CCC.

(*j*) If any certificates have not been retired upon final liquidation of the pool, CCC shall pay to the holders of the certificates the value thereof, plus interest.

5. The Lending Agency shall, upon receipt of instructions from CCC and in accordance with such instructions, deliver warehouse receipts representing cotton on which loans have been made in accordance with the provisions of section 1 hereof, to the warehouse in which the cotton is stored and secure from the warehouseman a receipt, in duplicate, in the form specified by Commodity Credit Corporation for each group of warehouse receipts delivered to the warehouseman. After delivery of such warehouse receipts to the warehouseman, the Lending Agency shall tender the notes evidencing the loans in accordance with the provisions of section 2 hereof, except that they shall be accompanied by the original receipt signed by the warehouseman in lieu of the warehouse receipts and shall be tendered on a separate Lending Agency's Letter of Transmittal from other notes, the duplicate receipt to be retained by the Lending Agency. The Lending Agency shall discontinue the delivery of warehouse receipts to the warehouseman hereunder when instructed to do so by CCC.

6. If a producer desires to obtain a loan hereunder on C. C. C. Cotton Form A prior to the time the loan value of the cotton can be determined and if the producer desires to obtain interim financing from the Lending Agency, the Lending Agency may make a loan (hereinafter called the "advance loan") to the producer on forms and in amounts agreed upon by the Lending Agency and the producer and obtain a duly executed Producer's Power of Attorney (C. C. C. Cotton Form J) from the producer. Advance loans shall not be made to producers whose names appear on the lists of persons indebted to the United States furnished by the county committee unless the producer furnishes evidence that the indebtedness has been satisfied. The duplicate copy of the power of attorney shall be delivered to the producer. On or before the date such loan is made, samples must have been drawn from the cotton and submitted to a Board of Cotton Examiners for classification, or, if the cotton has not arrived at the warehouse, the warehouseman must have been instructed to sample the cotton upon receipt and forward the samples for classification. For the cotton to be eligible for tender to CCC, on or before September 1, 1949, within 15 days after the dates of the classification certificates covering such cotton, or within 15 days after the dates of the warehouse receipts, whichever is later, the Lending Agency must (as provided in the Producer's Power of Attorney), make a loan or loans to the producer under section 1 hereof on all of such cotton which is eligible for a loan, prepare and execute on behalf of the producer Cotton Producer's Note and Loan Agreements evidencing such loans, apply the proceeds of the notes on the advance loan, and disburse any remaining proceeds of the notes in accordance with section 1 hereof. All such notes shall be tendered in accordance with section 2 hereof and shall be accompanied by the applicable Producer's Powers of Attorney. Such notes shall be transmitted on separate letters of transmittal. The Lending Agency shall not obtain a power of attorney on any other form authorizing the Lending Agency to execute Cotton Producer's Note and Loan Agreements on behalf of a producer to whom it makes a private loan.

7. In any case in which the Lending Agency has actual knowledge at the time a loan is made that the borrower is not eligible for a loan hereunder or has made a fraudulent representation in obtaining the loan, the lending Agency shall be liable for any loss incurred as a result of the making of such loan. Tendering the notes evidencing such loan to CCC, an agency of the United States, will also make the Lending Agency or its employees liable to criminal prosecution under 18 U. S. C. 287, 1001, and suit under 31 U. S. C. 231.

8. The Corporation shall have the right to terminate this Agreement by giving the Lending Agency notice in writing, but such termination shall not affect the rights and obligations of the parties hereto with respect to loans made by the lending agency prior to such termination. Upon such termination, the Lending Agency shall cease to make loans hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date set forth above.

[fol. 17]

COMMODITY CREDIT CORPORATION

By ______________________________
(Contracting officer)

____
(Lending agency)

ATTEST:

By ______________________________

____
(Title)

____
(Title)

C. C. C. Cotton Form C
U. S. DEPARTMENT OF AGRICULTURE
(6-1-49)
Commodity Credit Corporation

Budget Bureau
Clearance Waived

LENDING AGENCY'S LETTER OF TRANSMITTAL

ORIGINAL

(NOTES WILL BE ACCEPTED ONLY WHEN LISTED ON THIS FORM)

NEW ORLEANS PMA COMMODITY OFFICE, *New Orleans 12, La.:* ______________________, 19___

There are tendered herewith to Commodity Credit Corporation the following notes and collateral documents. The undersigned payee of such notes hereby certifies (a) that the loans evidenced by such notes were made in good faith, without actual knowledge of any liens or encumbrances on the cotton securing such notes, except warehouseman's liens, and in the belief that such cotton was "eligible cotton", as defined in the Cotton Loan Bulletin issued by Commodity Credit Corporation covering such loans; (b) that such notes were not signed in blank and carried by the payee under collateral agreements which permitted the payee to retain the notes, date them at his discretion, and deliver them to Commodity Credit Corporation; (c) that the notes were completed in every detail as of the dates disbursement thereon was made; (d) that there was paid by the undersigned on the dates shown in the notes and in the manner directed by the producers in the spaces provided in such notes, the full amounts of such notes, without any deduction for interest, commission, exchange, or other charges; and (e) that, to the best of the payee's knowledge and belief, the persons who executed the notes were authorized to act in the capacity in which the notes were signed and were entitled to receive the proceeds of the loans.

____
(Lending agency submitting notes)

____
(Address)

____

Submitting Agency's Number

(This form is for use by Lending Agencies tendering producers' notes to Commodity Credit Corporation and must be submitted in quadruplicate. Use only ink, indelible pencil, or typewriter in filling in blanks. The quintuplicate copy is to be retained by the Lending Agency. Prepare separate forms for Upland and American-Egyptian Cotton, for notes secured by warehouse receipts, order bills of lading, and chattel mortgages, and for notes accompanied by powers of attorney.)

SCHEDULE

(Each sheet must contain separate totals for number of notes, face amount of notes, and number of bales)

	Name of Producer	Date of Note	Number of Bales	Face Amount of Note Without Interest
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
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26.				
27.				
28.				
29.				
30.				
31.				
32.				
33.				
34.				
35.				
36.				
37.				
38.				
39.				
40.				
	TOTAL			
	Corrections and Rejections			
	Accepted			

(Lending agency submitting notes)

(Address)

Submitting Agency's Number

(This form is for use by Lending Agencies tendering producers' notes to Commodity Credit Corporation and must be submitted in quadruplicate. Use only ink, indelible pencil, or typewriter in filling in blanks. The quintuplicate copy is to be retained by the Lending Agency. Prepare separate forms for Upland and American-Egyptian Cotton, for notes secured by warehouse receipts, order bills of lading, and chattel mortgages, and for notes accompanied by powers of attorney.)

SCHEDULE

(Each sheet must contain separate totals for number of notes, face amount of notes, and number of bales)

Name of Producer	Date of Note	Number of Bales	Face Amount of Note Without Interest
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
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32.			
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34.			
35.			
36.			
37.			
38.			
39.			
40.			
TOTAL			
Corrections and Rejections			
Accepted			

1. You are requested to settle by * payable to

Name of Payee

Address of Payee

Payee Agency's Number

2. Return rejections to

Signature of Lending Agency Submitting Notes

By: (title)

*Indicate whether cash payment or Certificate of Interest is desired.

★

1949 C. C. C. Cotton Form A
6-8-49
U. S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

Budget Bureau.
Clearance waived.

ORIGINAL

ATTACH WAREHOUSE RECEIPTS OR BILLS OF LADING HERE

1949 COTTON PRODUCER'S NOTE AND LOAN AGREEMENT

Fill all blanks with ink, indelible pencil, or typewriter. The copy marked *original* is to be signed; the copy marked *duplicate* is to be retained by the producer. No papers containing additions, erasures, or alterations will be accepted by Commodity Credit Corporation.

COUNTY	STATE	LOAN No.
DO NOT USE THIS SPACE		

Producer (Print) ____ (Last name) (First name) (Middle initial)
Status ____ (State whether landowner, landlord, tenant, or sharecropper)
Address ____ (Complete address)
Cotton produced in ____ (County) (State)
If Advance Loan was made, Producer's Power of Attorney No. ____

SCHEDULE OF PLEDGED COTTON

____ (Name of warehouse) ____ (Address) ____ (Warehouse number)

Notice.—All warehouse-stored cotton securing this note must be in the same warehouse and secured by single-bale receipts. Bale tag and receipt number must agree.

Warehouse Receipt and Bale Tag No.	Date on Which Storage Charges Begin	Date of Official Classification	Compression [1]	Compression Paid [2]	Transportation Code [3]	Bagging [4]	Gross Weight [5]	Reduced From A/C

Number of bales ____
All cotton listed is (grade and staple) ____
Total gross weight ____
Loan value (per pound) ____

[1] Enter applicable term "flat" or "S. D." [2] Enter "yes" if paid, "no" if unpaid. [3] Enter "00" if received by wagon, truck or barge; if received by rail, enter code No. of railroad. [4] Enter kind of bagging. [5] If bale is covered with cotton bagging, add 7 pounds to the warehouse receipt weight to obtain the gross weight of the bale to be entered in column "gross weight."

AGREEMENT OF WAREHOUSEMAN

The undersigned warehouseman hereby agrees that the cotton described in the above or attached schedule shall be stored and handled in accordance with the terms and conditions of the Warehouseman's Certificate and Storage Agreement on the reverse side hereof and makes the representations contained in such Warehouseman's Certificate and Storage Agreement with respect to such cotton.

Date ____, 19__ ____ (Signature of warehouseman) * ____ (Agent or officer-title)

(This Agreement must not be dated more than 10 days preceding date of Producer's Note nor subsequent to the date of the Note)

PRODUCER'S NOTE

$ ____ Date ____

On or before July 31, 1950, or upon such earlier date as Commodity Credit Corporation may make demand for payment, for value received, the undersigned (hereinafter called "the Producer") promises to pay to the order of ____

Payee, at the office of Commodity Credit Corporation, Washington, D. C. ____

____/100 dollars, with interest from the date hereof until paid at the rate of 3 percent a year. The makers and endorsers severally waive presentment for payment, demand, protest, notice of protest, and notice of nonpayment of this note.

This note evidences a loan made available under the 1949 Cotton Loan Program of Commodity Credit Corporation (formulated pursuant to the Agricultural Adjustment Act of 1938, as amended and supplemented) and is secured by warehouse receipts or bills of lading representing the cotton described in the Schedule of Pledged Cotton above or in the schedule attached hereto. The Producer understands and agrees that the loan is made subject to and in consideration of the representations, warranties, and agreements contained in the Loan Agreement on the reverse side hereof and certifies that he has read the Loan Agreement and that he has made the representations, warranties, and agreements contained therein, with full knowledge of the provisions of Section 15(a) of the Commodity Credit Corporation Charter Act*, for the purpose of obtaining the loan, rendering this note eligible for purchase by or discount to Commodity Credit Corporation, an agency of the United States, and inducing such agency to acquire this note.

The Producer requests and directs the payee of this note to make funds available from the proceeds of the loan as follows:

NAME	ADDRESS	AMOUNT
		$
	TOTAL,	$

____ (Witness to producer's signature) ____ (Signature of producer) ____ (Print producer's name)

____ (Witness to Joint-producer's signature) ____ (Signature of Joint-producer or Agent) ____ (Print Joint-producer's or Agent's name)

LIENHOLDER'S WAIVER

(All landlords must sign this lien waiver whether or not they claim liens, unless they have signed the Producer's Note. The Producer, by signing this instrument, certifies that the cotton described in the Schedule of Pledged Cotton above or attached hereto is free and clear of any and all liens and encumbrances, except warehouseman's liens.)

The Undersigned, in consideration of the making of the loan evidenced by the Producer's Note, do hereby severally waive, relinquish, and surrender all right, title, and interest in and to the cotton described in the Schedule of Pledged Cotton above or attached hereto.

SIGNATURES OF LIENHOLDERS (INCLUDING FEDERAL AGENCIES) AND LANDLORDS

(If there are no lienholders or landlords, insert "NONE.")

____

CLERK'S CERTIFICATE

The undersigned certifies: (1) That he assisted the Producer or his agent in the preparation and execution of this Form A and that the fee charged for such services did not exceed the amount authorized to be charged for such services by Commodity Credit Corporation; (2) that the Producer is personally known to him and his signature on this Form A is genuine; (3) that, to the best of his knowledge and belief, all data entered on this Form A and all representations made by the Producer are true, complete, and correct, and the cotton described in the Schedule of Pledged Cotton above or attached hereto is "eligible cotton" as defined in 1949 C. C. C. Cotton Bulletin 1; and (4) that he delivered to the Producer or his agent the duplicate copy of this Form A.

____ (Signature)

Credit Corporation.

DO NOT USE THIS SPACE

Producer (Print) ____ (Last name) (First name) (Middle initial)
Status ____ (State whether landowner, landlord, tenant, or sharecropper)
Address ____ (Complete address)
Cotton produced in ____ (County) (State)
If Advance Loan was made, Producer's Power of Attorney No. ____

SCHEDULE OF PLEDGED COTTON

____ (Name of warehouse) ____ (Address) ____ (Warehouse number)

Notice.—All warehouse-stored cotton securing this note must be in the same warehouse and secured by single-bale receipts. Bale tag and receipt number must agree.

Warehouse Receipt and Bale Tag No.	Date on Which Storage Charges Begin	Date of Official Classification	Compression [1]	Compression Paid [2]	Transportation Code [3]	Bagging [4]	Gross Weight [5]	Reduced From A/C

Number of bales ____
All cotton listed is (grade and staple) ____
Total gross weight ____
Loan value (per pound) ____

[1] Enter applicable term "flat" or "S. D." [2] Enter "yes" if paid, "no" if unpaid. [3] Enter "00" if received by wagon, truck or barge; if received by rail, enter code No. of railroad. [4] Enter kind of bagging. [5] If bale is covered with cotton bagging, add 7 pounds to the warehouse receipt weight to obtain the gross weight of the bale to be entered in column "gross weight."

AGREEMENT OF WAREHOUSEMAN

The undersigned warehouseman hereby agrees that the cotton described in the above or attached schedule shall be stored and handled in accordance with the terms and conditions of the Warehouseman's Certificate and Storage Agreement on the reverse side hereof and makes the representations contained in such Warehouseman's Certificate and Storage Agreement with respect to such cotton.

Date ____, 19__ ____ (Signature of warehouseman) * ____ (Agent or officer-title)

(This Agreement must not be dated more than 10 days preceding date of Producer's Note nor subsequent to the date of the Note)

PRODUCER'S NOTE

$ ____ Date ____

On or before July 31, 1950, or upon such earlier date as Commodity Credit Corporation may make demand for payment, for value received, the undersigned (hereinafter called "the Producer") promises to pay to the order of ____

Payee, at the office of Commodity Credit Corporation, Washington, D. C. ____

____/100 dollars, with interest from the date hereof until paid at the rate of 3 percent a year. The makers and endorsers severally waive presentment for payment, demand, protest, notice of protest, and notice of nonpayment of this note.

This note evidences a loan made available under the 1949 Cotton Loan Program of Commodity Credit Corporation (formulated pursuant to the Agricultural Adjustment Act of 1938, as amended and supplemented) and is secured by warehouse receipts or bills of lading representing the cotton described in the Schedule of Pledged Cotton above or in the schedule attached hereto. The Producer understands and agrees that the loan is made subject to and in consideration of the representations, warranties, and agreements contained in the Loan Agreement on the reverse side hereof and certifies that he has read the Loan Agreement and that he has made the representations, warranties, and agreements contained therein, with full knowledge of the provisions of Section 15(a) of the Commodity Credit Corporation Charter Act*, for the purpose of obtaining the loan, rendering this note eligible for purchase by or discount to Commodity Credit Corporation, an agency of the United States, and inducing such agency to acquire this note.

The Producer requests and directs the payee of this note to make funds available from the proceeds of the loan as follows:

NAME	ADDRESS	AMOUNT
		$
	TOTAL,	$

____ (Witness to producer's signature) ____ (Signature of producer) ____ (Print producer's name)

____ (Witness to Joint-producer's signature) ____ (Signature of Joint-producer or Agent) ____ (Print Joint-producer's or Agent's name)

LIENHOLDER'S WAIVER

(All landlords must sign this lien waiver whether or not they claim liens, unless they have signed the Producer's Note. The Producer, by signing this instrument, certifies that the cotton described in the Schedule of Pledged Cotton above or attached hereto is free and clear of any and all liens and encumbrances, except warehouseman's liens.)

The Undersigned, in consideration of the making of the loan evidenced by the Producer's Note, do hereby severally waive, relinquish, and surrender all right, title, and interest in and to the cotton described in the Schedule of Pledged Cotton above or attached hereto.

SIGNATURES OF LIENHOLDERS (INCLUDING FEDERAL AGENCIES) AND LANDLORDS

(If there are no lienholders or landlords, insert "NONE.")

____

____

CLERK'S CERTIFICATE

The undersigned certifies: (1) That he assisted the Producer or his agent in the preparation and execution of this Form A and that the fee charged for such services did not exceed the amount authorized to be charged for such services by Commodity Credit Corporation; (2) that the Producer is personally known to him and his signature on this Form A is genuine; (3) that, to the best of his knowledge and belief, all data entered on this Form A and all representations made by the Producer are true, complete, and correct, and the cotton described in the Schedule of Pledged Cotton above or attached hereto is "eligible cotton" as defined in 1949 C. C. C. Cotton Bulletin 1; and (4) that he delivered to the Producer or his agent the duplicate copy of this Form A.

____ (Signature)

PAYEE'S ENDORSEMENT

The undersigned payee of the Producer's Note hereby assigns, transfers, and endorses the Producer's Note to Commodity Credit Corporation without recourse.

____ (Date) ____ (Payee—exactly as written in above note) ____ (Title)

* See Reverse Side

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LOAN AGREEMENT

1. The Producer hereby sells, assigns, pledges, and/or hypothecates to the payee of the Producer's Note on the reverse side hereof, (hereinafter called "the note"), and to any subsequent holder thereof, the warehouse receipts or bills of lading representing the cotton described in the Schedule of Pledged Cotton on the reverse side hereof or attached hereto (hereinafter called "the cotton") as collateral security for the payment of the note, plus charges (i. e., all fees, costs, and expenses incident to insuring, storing, transporting, compressing, conditioning, marketing, satisfying liens and encumbrances, or otherwise handling or dealing with such cotton for the purpose of protecting the interest therein of the Producer or a holder of the note) and interest.

2. The Producer's remaining right, title, and interest in the cotton and his right to redeem the cotton shall not be assignable or transferable to any third person except with the approval of and in the manner prescribed by Commodity Credit Corporation.

3. For the purpose of obtaining the loan, evidenced by the note, rendering the note eligible for purchase or discount by Commodity Credit Corporation, an agency of the United States, and inducing such agency to acquire the note, the Producer, with full knowledge of the provisions of Section 15 (a) of the Commodity Credit Corporation Charter Act represents and warrants to all holders of the note as follows:

(*a*) That the cotton is in existence, is in good condition, and is not false-packed, water-packed, reginned or repacked, that he produced the cotton in the capacity (i. e., landlord, landowner, tenant, or sharecropper) stated on the reverse side hereof, and that the county and State in which the cotton was produced are correctly stated on the reverse side hereof.

(*b*) That he has the legal right to pledge the cotton as collateral security for the loan; and that the benefits of the loan will accrue solely to himself and any tenants and sharecroppers having an interest in the cotton or its proceeds and have not been transferred to any other person by way of assignment, sale, or option.

(*c*) That if he is a landlord or landowner, he has not acquired the cotton directly or indirectly from a share tenant or sharecropper and has not received it in payment of fixed or standing rent; and that if he produced it in the capacity of landlord, share tenant or sharecropper, it is his separate share of the crop unless he is a landlord and is tendering cotton in which both he and a share tenant or sharecropper have an interest.

(*d*) That, if he is a share tenant or sharecropper and the note is not signed jointly by himself and his landlord, no landlord has an interest in the cotton.

(*e*) That he has read the 1949 Cotton Loan Bulletin (1949 C. C. C. Cotton Bulletin 1) and is eligible, under such Bulletin, for a loan on the cotton.

(*f*) That the cotton is free and clear of all liens and encumbrances, except warehouseman's liens as specified in the Warehouseman's Certificate and Storage Agreement below; and that all other persons who claimed to have any liens or encumbrances on the cotton (except the warehouseman), and all landlords, whether or not they claimed landlord's liens on the cotton, have executed the Lienholder's Waiver on the reverse side hereof.

(*g*) That, to the best of his knowledge and belief, all the data and information on the reverse side hereof are true, complete, and correct.

4. The Producer agrees that, if any tenant or sharecropper has an interest in the cotton, such tenant or sharecropper will be paid his pro rata share of the proceeds of the loan and his pro rata share of any additional proceeds received from the cotton.

5. All holders of the note shall look solely to the cotton for satisfaction of the loan unless the Producer has made a fraudulent representation in obtaining the loan. In the event that the Producer has made such a fraudulent representation, he shall be and remain personally liable to the holder of the note for the payment of the loan, plus interest and charges, for any amount which any holder of the note pays because of such fraudulent representation in order to protect or retain his interest in the cotton, and for the amount of any other loss or liability incurred by any holder of the note as a result of such fraudulent representation.

6. If Commodity Credit Corporation, or any other Federal agency, shall become the holder of the note, it may, before or after maturity, move the cotton from one storage point to another, subject to the provisions of the act of June 16, 1938 (7 U. S. C. 1383a); compress the cotton; store the cotton separately, in block or otherwise; insure or reinsure the cotton against any risk; or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the Producer or the holder; release, substitute, and obtain any and all instruments or documents; and pay any fees, costs, or expenses as may in any way be necessary or appropriate in taking any action authorized by this section. Any fees, costs, and expenses paid by the holder pursuant to this section shall be charges against the cotton. Such charges, plus interest thereon at the rate of 3 per centum per annum, shall be paid by the Producer upon redemption of the cotton or, if the cotton is not redeemed, shall be paid out of the proceeds received by the holder from the disposition of the cotton. This section shall be construed as authorizing but not requiring the holder to do any of the things specified herein, and the holder shall not be liable to any person whatsoever for any obligation which has accrued or may accrue under or in connection with any contract to which the holder is not a party signatory, including obligations under any such contract which may accrue as a result of the shipment or other handling of the cotton pursuant to the authority contained herein.

7. Upon the maturity and nonpayment of the note, and in the event that the note is held by Commodity Credit Corporation or any other Federal agency, the holder is authorized without notice to the Producer to pool (one or more producers' pools may be created) all or any part of the cotton with any other cotton held under generally similar loan agreements, and is further authorized, whether or not the cotton is pooled, to sell, assign, transfer, and deliver the cotton, or documents evidencing title thereto, at such time, in such manner, for cash or upon such terms and conditions as the holder may determine, at any cotton exchange, or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and, upon such sale, the holder may become the purchaser of the whole or any part of such cotton.

8. In the event that the cotton is disposed of other than through a producers' pool, any overplus remaining from the proceeds received therefrom, after deducting from such proceeds the amount of the loan, charges, and interest, shall be paid to the Producer.

9. In the event that the cotton becomes a part of a producers' pool created by Commodity Credit Corporation or other Federal agency, the Producer shall not thereafter have the right to redeem the cotton by payment of the loan or otherwise. Proceeds from cotton included in the pool shall be applied against the loans and charges on such cotton and the interest on such loans and charges in the same proportion as the unpaid balance of such loans and charges bears to the total amount of interest outstanding on such loans and charges. Upon liquidation of all cotton in the pool, any overplus remaining from the proceeds from such cotton after satisfaction of the expenses of conducting the pool, the total amount paid out with respect to such cotton (including the total amount of the loans and charges thereon), and interest shall be prorated among the producers whose cotton was included in the pool in proportion to the respective amounts of the loans made to the producers on such cotton.

10. Any amounts payable to the Producer pursuant to section 8 or 9 hereof shall be paid to him or his personal representative without right of assignment to or substitution of any other person.

11. The Producer understands and agrees that the making of loans pursuant to this 1949 Cotton Producer's Note and Loan Agreement and the inclusion of the cotton in a producers' pool and the liquidation of such pool pursuant to sections 7 and 9 hereof constitute integral parts of a national program designed to protect the interests of producers and consumers by providing for a continuous and stable supply of agricultural commodities for domestic production adequate to meet consumers' demands at prices fair to both producers and consumers. In pursuance of such program, Commodity Credit Corporation or other Federal agency shall have the right to treat pooled cotton as a reserve supply to be marketed under such sales policies as such Corporation or agency determines will promote orderly marketing, protect the interests of producers and consumers, and not unduly impair the market for the current crop of the commodity, even though part or all of such cotton is disposed of under such policies at prices less than the current domestic price for such commodity.

12. The Producer further warrants for the benefit of any holder of the note, other than the payee, that he has no defense to the note or set-off or counterclaim against the payee; that none will be claimed which may hereafter arise against any prior party; and that in case of any judicial proceedings on the note by any such holder he hereby waives the right to any and all defenses, counterclaims, or set-offs against any and all prior parties, except as provided in section 5 hereof.

13. Unless the note is made payable to Commodity Credit Corporation, the Producer represents that he has received from the payee the full amount thereof, without any deduction for interest, commission, storage, insurance, or other charge (except the authorized clerk's fee in case an employee of the payee has executed the Clerk's Certificate).

WAREHOUSEMAN'S CERTIFICATE AND STORAGE AGREEMENT

All charges on the cotton listed in the schedule on the reverse side hereof or attached hereto (hereinafter called "the cotton") are paid to the dates of the warehouse receipts representing the cotton. The cotton is in existence, has been examined and bears no visible evidence of being false-packed or water-packed, is not compressed to high density, is undamaged, and is and will be kept under cover within a structure enclosed in such manner that the cotton is adequately protected from weather damage. All the cotton which was in the open after it was received is clean and is in good condition. The cotton is insured against loss or damage by fire for the full market value (if the cotton is compressed, its market value shall be the market value of flat cotton plus compression charges) at the time and place of loss under a policy or policies providing coverage similar to that afforded under the standard fire policy of the State in which the cotton is stored and will be kept so insured so long as the warehouse receipts therefor are outstanding, unless the cotton comes under a storage agreement between the warehouseman and the holder allowing the warehouseman to cancel his insurance on the cotton. From the dates of the warehouse receipts through July 31, 1950, all charges on the cotton for storage, insurance, picking out by tag numbers, and loading according to custom into cars or trucks, shall be at the rate of 33 cents per bale per month or fraction thereof for cotton stored in warehouses operating compress facilities, and at the rate of 38 cents per bale per month or fraction thereof for cotton stored in warehouses not operating compress facilities, or the warehouseman's established tariff on other than Commodity Credit Corporation loan cotton, whichever is less. All other charges on the cotton, including compression charges, and flat delivery charges on cotton moved from a warehouse operating compress facilities without payment of compression charges, will be at the rates provided in the warehouseman's established tariff in effect at the time the service is ordered performed; provided that no charge may be made with respect to the cotton that is not applicable to all cotton stored by the warehouseman, except that the warehouseman may make a charge not to exceed 25 cents per bale for transmitting samples to the designated classing office, postage, verifying the information contained in the Schedule of Pledged Cotton, and executing loan papers, if such charges are included in the warehouseman's tariff; and provided further that in no event shall such 25 cent charge, a service charge, or charges for receiving, tagging, weighing and sampling on arrival, or storage of samples be collected from the holder of the note or a purchaser of the cotton. No charge of any kind whatsoever will be paid with respect to any of the cotton compressed to high density without the written authority of Commodity Credit Corporation. Representative samples from both sides of each bale of the cotton were drawn by the undersigned warehouseman and delivered or forwarded for classing to a Board of Cotton Examiners of the U. S. Department of Agriculture, except that a sample has not been drawn from any bale of the cotton and delivered or forwarded to a Board of Cotton Examiners, except for review, if the warehouseman knows or has reason to believe that the producer has a Form 1 Classification Memorandum covering such bale. The grade and staple shown in the above or attached schedule is the grade and staple reported to the warehouseman by the Board of Cotton Examiners or shown on the Form 1 Classification Memorandum. The warehouseman agrees to keep such official classification records until notified by Commodity Credit Corporation that such records may be destroyed. In the event that the cotton is pooled by Commodity Credit Corporation or the loan evidenced by the Producer's Note is extended or carried in past due status by Commodity Credit Corporation after July 31, 1950, the rates quoted herein will remain in effect until terminated by Commodity Credit Corporation or the warehouseman at the end of any month by giving the other at least 30 days' notice, until 15 days after the cotton is sold (Commodity Credit Corporation shall promptly notify the warehouseman of the date of the sale), or until the cotton comes under another storage agreement between the warehouseman and Commodity Credit Corporation, whichever is earlier. If the cotton is redeemed from the loan by the producer or the purchaser of his equity or the cotton is sold by Commodity Credit Corporation, charges provided herein shall be applicable for services rendered during the period extending from the dates of the warehouse receipts to and including 15 days after such redemption or sale, and the warehouseman shall not charge the holders of the warehouse receipts representing such cotton for services rendered for that period an amount in excess of that computed in accordance with this agreement. Commodity Credit Corporation may, by agents or otherwise, inspect the cotton, the warehouse, and the records of the warehouse at any time. The warehouseman agrees that if the cotton is ordered shipped by Commodity Credit Corporation for the purpose of reconcentration or otherwise, shipments will be made promptly and storage charges will stop on receipt of shipping instructions and surrender of the warehouse receipts unless the cotton is shipped within a reasonable time, as determined by Commodity Credit Corporation. The representations and agreements set out above are made for the purpose of inducing the making of a loan evidenced by the Producer's Note and of inducing Commodity Credit Corporation to acquire such note.

compressing, conditioning, marketing, satisfying liens and encumbrances, or otherwise handling or dealing with such cotton for the purpose of protecting the interest therein of the Producer or a holder of the note) and interest.

2. The Producer's remaining right, title, and interest in the cotton and his right to redeem the cotton shall not be assignable or transferable to any third person except with the approval of and in the manner prescribed by Commodity Credit Corporation.

3. For the purpose of obtaining the loan, evidenced by the note, rendering the note eligible for purchase or discount by Commodity Credit Corporation, an agency of the United States, and inducing such agency to acquire the note, the Producer, with full knowledge of the provisions of Section 15 (a) of the Commodity Credit Corporation Charter Act represents and warrants to all holders of the note as follows:

(*a*) That the cotton is in existence, is in good condition, and is not false-packed, water-packed, reginned or repacked, that he produced the cotton in the capacity (i. e., landlord, landowner, tenant, or sharecropper) stated on the reverse side hereof, and that the county and State in which the cotton was produced are correctly stated on the reverse side hereof.

(*b*) That he has the legal right to pledge the cotton as collateral security for the loan; and that the benefits of the loan will accrue solely to himself and any tenants and sharecroppers having an interest in the cotton or its proceeds and have not been transferred to any other person by way of assignment, sale, or option.

(*c*) That if he is a landlord or landowner, he has not acquired the cotton directly or indirectly from a share tenant or sharecropper and has not received it in payment of fixed or standing rent; and that if he produced it in the capacity of landlord, share tenant or sharecropper, it is his separate share of the crop unless he is a landlord and is tendering cotton in which both he and a share tenant or sharecropper have an interest.

(*d*) That, if he is a share tenant or sharecropper and the note is not signed jointly by himself and his landlord, no landlord has an interest in the cotton.

(*e*) That he has read the 1949 Cotton Loan Bulletin (1949 C. C. C. Cotton Bulletin 1) and is eligible, under such Bulletin, for a loan on the cotton.

(*f*) That the cotton is free and clear of all liens and encumbrances, except warehouseman's liens as specified in the Warehouseman's Certificate and Storage Agreement below; and that all other persons who claimed to have any liens or encumbrances on the cotton (except the warehouseman), and all landlords, whether or not they claimed landlord's liens on the cotton, have executed the Lienholder's Waiver on the reverse side hereof.

(*g*) That, to the best of his knowledge and belief, all the data and information on the reverse side hereof are true, complete, and correct.

4. The Producer agrees that, if any tenant or sharecropper has an interest in the cotton, such tenant or sharecropper will be paid his pro rata share of the proceeds of the loan and his pro rata share of any additional proceeds received from the cotton.

5. All holders of the note shall look solely to the cotton for satisfaction of the loan unless the Producer has made a fraudulent representation in obtaining the loan. In the event that the Producer has made such a fraudulent representation, he shall be and remain personally liable to the holder of the note for the payment of the loan, plus interest and charges, for any amount which any holder of the note pays because of such fraudulent representation in order to protect or retain his interest in the cotton, and for the amount of any other loss or liability incurred by any holder of the note as a result of such fraudulent representation.

6. If Commodity Credit Corporation, or any other Federal agency, shall become the holder of the note, it may, before or after maturity, move the cotton from one storage point to another, subject to the provisions of the act of June 16, 1938 (7 U. S. C. 1383a); compress the cotton; store the cotton separately, in block or otherwise; insure or reinsure the cotton against any risk; or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the Producer or the holder; release, substitute, and obtain any and all instruments or documents; and pay any fees, costs, or expenses as may in any way be necessary or appropriate in taking any action authorized by this section. Any fees, costs, and expenses paid by the holder pursuant to this section shall be charges against the cotton. Such charges, plus interest thereon at the rate of 3 per centum per annum, shall be paid by the Producer upon redemption of the cotton or, if the cotton is not redeemed, shall be paid out of the proceeds received by the holder from the disposition of the cotton. This section shall be construed as authorizing but not requiring the holder to do any of the things specified herein, and the holder shall not be liable to any person whatsoever for any obligation which has accrued or may accrue under or in connection with any contract to which the holder is not a party signatory, including obligations under any such contract which may accrue as a result of the shipment or other handling of the cotton pursuant to the authority contained herein.

7. Upon the maturity and nonpayment of the note, and in the event that the note is held by Commodity Credit Corporation or any other Federal agency, the holder is authorized without notice to the Producer to pool (one or more producers' pools may be created) all or any part of the cotton with any other cotton held under generally similar loan agreements, and is further authorized, whether or not the cotton is pooled, to sell, assign, transfer, and deliver the cotton, or documents evidencing title thereto, at such time, in such manner, for cash or upon such terms and conditions as the holder may determine, at any cotton exchange, or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and, upon such sale, the holder may become the purchaser of the whole or any part of such cotton.

8. In the event that the cotton is disposed of other than through a producers' pool, any overplus remaining from the proceeds received therefrom, after deducting from such proceeds the amount of the loan, charges, and interest, shall be paid to the Producer.

9. In the event that the cotton becomes a part of a producers' pool created by Commodity Credit Corporation or other Federal agency, the Producer shall not thereafter have the right to redeem the cotton by payment of the loan or otherwise. Proceeds from cotton included in the pool shall be applied against the loans and charges on such cotton and the interest on such loans and charges in the same proportion as the unpaid balance of such loans and charges bears to the total amount of interest outstanding on such loans and charges. Upon liquidation of all cotton in the pool, any overplus remaining from the proceeds from such cotton after satisfaction of the expenses of conducting the pool, the total amount paid out with respect to such cotton (including the total amount of the loans and charges thereon), and interest shall be prorated among the producers whose cotton was included in the pool in proportion to the respective amounts of the loans made to the producers on such cotton.

10. Any amounts payable to the Producer pursuant to section 8 or 9 hereof shall be paid to him or his personal representative without right of assignment to or substitution of any other person.

11. The Producer understands and agrees that the making of loans pursuant to this 1949 Cotton Producer's Note and Loan Agreement and the inclusion of the cotton in a producers' pool and the liquidation of such pool pursuant to sections 7 and 9 hereof constitute integral parts of a national program designed to protect the interests of producers and consumers by providing for a continuous and stable supply of agricultural commodities for domestic production adequate to meet consumers' demands at prices fair to both producers and consumers. In pursuance of such program, Commodity Credit Corporation or other Federal agency shall have the right to treat pooled cotton as a reserve supply to be marketed under such sales policies as such Corporation or agency determines will promote orderly marketing, protect the interests of producers and consumers, and not unduly impair the market for the current crop of the commodity, even though part or all of such cotton is disposed of under such policies at prices less than the current domestic price for such commodity.

12. The Producer further warrants for the benefit of any holder of the note, other than the payee, that he has no defense to the note or set-off or counterclaim against the payee; that none will be claimed which may hereafter arise against any prior party; and that in case of any judicial proceedings on the note by any such holder he hereby waives the right to any and all defenses, counterclaims, or set-offs against any and all prior parties, except as provided in section 5 hereof.

13. Unless the note is made payable to Commodity Credit Corporation, the Producer represents that he has received from the payee the full amount thereof, without any deduction for interest, commission, storage, insurance, or other charge (except the authorized clerk's fee in case an employee of the payee has executed the Clerk's Certificate).

WAREHOUSEMAN'S CERTIFICATE AND STORAGE AGREEMENT

All charges on the cotton listed in the schedule on the reverse side hereof or attached hereto (hereinafter called "the cotton") are paid to the dates of the warehouse receipts representing the cotton. The cotton is in existence, has been examined and bears no visible evidence of being false-packed or water-packed, is not compressed to high density, is undamaged, and is and will be kept under cover within a structure enclosed in such manner that the cotton is adequately protected from weather damage. All the cotton which was in the open after it was received is clean and is in good condition. The cotton is insured against loss or damage by fire for the full market value (if the cotton is compressed, its market value shall be the market value of flat cotton plus compression charges) at the time and place of loss under a policy or policies providing coverage similar to that afforded under the standard fire policy of the State in which the cotton is stored and will be kept so insured so long as the warehouse receipts therefor are outstanding, unless the cotton comes under a storage agreement between the warehouseman and the holder allowing the warehouseman to cancel his insurance on the cotton. From the dates of the warehouse receipts through July 31, 1950, all charges on the cotton for storage, insurance, picking out by tag numbers, and loading according to custom into cars or trucks, shall be at the rate of 33 cents per bale per month or fraction thereof for cotton stored in warehouses operating compress facilities, and at the rate of 38 cents per bale per month or fraction thereof for cotton stored in warehouses not operating compress facilities, or the warehouseman's established tariff on other than Commodity Credit Corporation loan cotton, whichever is less. All other charges on the cotton, including compression charges, and flat delivery charges on cotton moved from a warehouse operating compress facilities without payment of compression charges, will be at the rates provided in the warehouseman's established tariff in effect at the time the service is ordered performed; provided that no charge may be made with respect to the cotton that is not applicable to all cotton stored by the warehouseman, except that the warehouseman may make a charge not to exceed 25 cents per bale for transmitting samples to the designated classing office, postage, verifying the information contained in the Schedule of Pledged Cotton, and executing loan papers, if such charges are included in the warehouseman's tariff; and provided further that in no event shall such 25 cent charge, a service charge, or charges for receiving, tagging, weighing and sampling on arrival, or storage of samples be collected from the holder of the note or a purchaser of the cotton. No charge of any kind whatsoever will be paid with respect to any of the cotton compressed to high density without the written authority of Commodity Credit Corporation. Representative samples from both sides of each bale of the cotton were drawn by the undersigned warehouseman and delivered or forwarded for classing to a Board of Cotton Examiners of the U. S. Department of Agriculture, except that a sample has not been drawn from any bale of the cotton and delivered or forwarded to a Board of Cotton Examiners, except for review, if the warehouseman knows or has reason to believe that the producer has a Form 1 Classification Memorandum covering such bale. The grade and staple shown in the above or attached schedule is the grade and staple reported to the warehouseman by the Board of Cotton Examiners or shown on the Form 1 Classification Memorandum. The warehouseman agrees to keep such official classification records until notified by Commodity Credit Corporation that such records may be destroyed. In the event that the cotton is pooled by Commodity Credit Corporation or the loan evidenced by the Producer's Note is extended or carried in past due status by Commodity Credit Corporation after July 31, 1950, the rates quoted herein will remain in effect until terminated by Commodity Credit Corporation or the warehouseman at the end of any month by giving the other at least 30 days' notice, until 15 days after the cotton is sold (Commodity Credit Corporation shall promptly notify the warehouseman of the date of the sale), or until the cotton comes under another storage agreement between the warehouseman and Commodity Credit Corporation, whichever is earlier. If the cotton is redeemed from the loan by the producer or the purchaser of his equity or the cotton is sold by Commodity Credit Corporation, charges provided herein shall be applicable for services rendered during the period extending from the dates of the warehouse receipts to and including 15 days after such redemption or sale, and the warehouseman shall not charge the holders of the warehouse receipts representing such cotton for services rendered for that period an amount in excess of that computed in accordance with this agreement. Commodity Credit Corporation may, by agents or otherwise, inspect the cotton, the warehouse, and the records of the warehouse at any time. The warehouseman agrees that if the cotton is ordered shipped by Commodity Credit Corporation for the purpose of reconcentration or otherwise, shipments will be made promptly and storage charges will stop on receipt of shipping instructions and surrender of the warehouse receipts unless the cotton is shipped within a reasonable time, as determined by Commodity Credit Corporation. The representations and agreements set out above are made for the purpose of inducing the making of a loan evidenced by the Producer's Note and of inducing Commodity Credit Corporation to acquire such note.

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*Section 15 (a) of the Commodity Credit Corporation Charter Act (62 Stat. 1070) provides a fine of not more than $10,000 or not more than five years' imprisonment for making

C. C. C. Cotton Form D
(6-9-49)
U. S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION

Budget Bureau.
Clearance waived.

ORIGINAL

LENDING AGENCY AGREEMENT

COVERING LOANS ON COTTON OF THE __________ CROP
(Year)

THIS AGREEMENT, made and entered into as of the __________ day of __________, 19____, by and between Commodity Credit Corporation (hereinafter referred to as CCC), an agency of the United States, and

____
(Lending agency)

____
(Address)

____

(hereinafter referred to as the "Lending Agency").

WITNESSETH:

WHEREAS CCC has undertaken a Cotton Loan Program for cotton of the crop specified above and has issued a Cotton Loan Bulletin (C. C. C. Cotton Bulletin 1, hereinafter referred to as the "Bulletin") for such program setting out the terms and conditions under which producers may obtain loans secured by cotton of such crop, which Bulletin and any amendments and supplements thereto are hereby made a part of this agreement and are to apply hereto the same as though they were expressly rewritten and included herein; and

WHEREAS CCC desires to facilitate completion of such loans and the Lending Agency desires to make such loans:

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree for themselves, their successors, and their assigns, as follows:

1. Upon execution of this Agreement by the Lending Agency and CCC, the Lending Agency may make loans in accordance with the provisions of the Bulletin and this Agreement to producers of cotton of the crop specified above. Such loans shall be made only upon tender by the producers of (*a*) duly executed Cotton Producer's Note and Loan Agreements (C. C. C. Cotton Form A) and warehouse receipts representing the cotton and meeting the requirements of the Bulletin, (*b*) duly executed Cotton Producer's Notes (C. C. C. Cotton Form E) and copies of duly executed and recorded Cotton Chattel Mortgages (C. C. C. Cotton Form F) covering the cotton, or (*c*) duly executed Cotton Producer's Note and Loan Agreements (C. C. C. Cotton Form A), order bills of lading (original and one copy) representing the cotton and covering the shipment of the cotton by Receiving Agencies approved by CCC, and (if the Receiving Agency is not a warehouseman) Weight and Condition Certificates in the form specified by CCC covering the cotton. C. C. C. Cotton Forms A and E will hereinafter be referred to as "notes." Such notes shall be used by the Lending Agency only in making loans under this Agreement. The date of each note must be the date on which the Lending Agency makes full disbursement of the loan proceeds. Full disbursement of the loan proceeds must be made to the producer or in the manner directed by the producer in the space provided in the notes. Each note must state the name of the producer, clerk, or other recipients of the loan proceeds, and the amount paid to each, accounting for the full proceeds of the loan. The Lending Agency shall not make a loan on cotton pursuant to this Agreement if, to its knowledge, the cotton is damaged, destroyed, or impaired, is subject to any prior lien or encumbrance (except warehouseman's liens), or is otherwise ineligible for a loan under the Bulletin. The Lending Agency shall not make any deduction for interest, commission, exchange, or other charges from the amount of any loan hereunder. Loans shall not be made upon cotton covered by order bills of lading until after the Lending Agency receives notice from CCC that it may make such loans, and the Lending Agency shall cease making such loans upon receipt of notice from CCC.

2. The Lending Agency shall tender all notes evidencing loans which it has made in accordance with the provisions of section 1 hereof, together with the required supporting documents, to the New Orleans PMA Commodity Office, Masonic Temple Building, New Orleans 12, La., unless otherwise directed by CCC, within 15 days after the dates of such notes. Such tender shall be made by a duly executed Lending Agency's Letter of Transmittal (C. C. C. Cotton Form C), in quadruplicate, indicating whether the notes are transmitted for purchase or for pooling. All of the notes tendered on any one letter of transmittal must be secured by cotton stored in the same custodial district, as defined in the Bulletin. Forty notes shall be submitted on each letter of transmittal except when fewer notes are listed in order that they may be tendered within 15 days after execution or where the Lending Agency draws sight-drafts under section 3 hereof. Notes should be listed in the order of their dates. Notes secured by warehouse receipts, notes secured by order bills of lading, and notes secured by chattel mortgages shall be submitted on separate letters of transmittal; and notes covering upland and American-Egyptian cotton shall be submitted on separate letters of transmittal. One copy of the letter of transmittal will be returned to the Lending Agency and will constitute a receipt for the notes. All notes tendered hereunder will be examined by CCC and notes found to be unacceptable will be returned. Notes returned will be accepted if retendered in acceptable form.

3. If notes tendered hereunder are tendered for purchase, CCC shall, as soon as practicable, pay to the Lending Agency the face value of the notes accepted plus interest thereon at the rate of 1½ percent per annum from the respective dates of such notes to the date of payment of the purchase price by CCC.

The Lending Agency, subject to such instructions and requirements as CCC may hereafter from time to time give to the Lending Agency, may obtain immediate payment for notes it desires to sell by drawing sight drafts on CCC payable at a Federal Reserve Bank approved by CCC in amounts specified in such instructions; provided, that the Lending Agency shall previously have been approved by CCC as eligible to draw such drafts on CCC. The Lending Agency shall reimburse CCC for any notes for which the Lending Agency receives payment by drawing drafts on CCC and which are rejected by CCC or shall accept, under trust receipt, such notes as are returned to it by CCC for correction and accomplish any necessary corrections. The Lending Agency agrees that CCC may, if it desires, draw on the Lending Agency for reimbursement to CCC for any notes rejected.

4. If notes tendered hereunder are tendered for pooling, the notes which are accepted shall be placed in a pool, which shall be operated as follows:

(*a*) A separate pool shall be established in each custodial district, as defined in the Bulletin, for the notes secured by cotton stored in that district, and the custodial office for the district shall act as custodian of the pool.

(*b*) The custodial office shall issue to the approved Lending Agency designated in the letter of transmittal on which the notes were tendered a Certificate of Interest (C. C. C. Cotton Form H, hereinafter referred to as a "certificate") in a face amount equal to the face amounts of the notes deposited, evidencing the deposit of such notes in the pool pursuant to this Agreement. The face amount of the certificate, less payments thereon, shall constitute the value of the certificate, which shall bear interest from the date thereof at the rate of 1½ percent per annum, payable at the time and upon the amount of each payment made upon the certificate.

[OVER]

(P. 15)

(*c*) The date of the certificate shall be the average date of all the notes covered by the certificate weighted in accordance with the amounts of such notes.

(*d*) The custodial office, upon issuing a certificate, shall act as custodian thereof for the certificate holder until it is retired or purchased by CCC and shall, as promptly as possible after issuing the certificate, furnish the certificate holder with a copy thereof. The custodial office shall enter on the reverse side of the certificate all payments made thereon. When any certificate is retired by payment to the holder of the value thereof, plus interest, the certificate shall be canceled. Canceled certificates shall be retained by the custodial office.

(*e*) A certificate may be transferred only upon the following conditions, except for transfers to and from a Federal Reserve Bank. A transfer may be made only to another approved lending agency. Only two such transfers of the certificate may be made. A transfer may be made only by an Assignment of Certificate of Interest (C. C. C. Cotton Form I) and will be effective only upon the receipt and acceptance of such form by the custodial office. An assignment received during the first 10 days of any month will not be effective until the end of such period, and any payment upon the certificate during such period will be made to the transferor rather than the transferee.

If the certificate holder is a member bank of the Federal Reserve System, any number of transfers of the certificate may also be made to and from a Federal Reserve Bank which has entered into an agreement with CCC authorizing the transfer of certificates to the Federal Reserve Bank. Any such transfer will be effective upon receipt by the custodial office of telegraphic advice from the Federal Reserve Bank that the certificate has been so assigned, provided that such advice shall be subsequently confirmed by the submission of a duly executed Assignment of Certificate of Interest, and provided further that payments made on certificates during the first 10 days of any calendar month will be made without regard for any assignment of which advice is received during the same 10-day period.

(*f*) CCC may, and shall upon demand by the certificate holder, purchase any outstanding certificate at any time by paying to the certificate holder the value thereof plus accrued interest. Upon such purchase the certificate shall be canceled by the custodial office, but CCC shall participate in the pool to the same extent as if the certificate had not been canceled.

(*g*) CCC may deposit in the pool any notes held by CCC or other documents evidencing loans made by CCC under such program. No certificate shall be issued to CCC to evidence the deposit of such notes and documents, but CCC shall participate in the pool in the same manner as if a certificate had been issued.

(*h*) The proceeds obtained each month through collection or other appropriate credits to the principal amounts of the notes deposited in the pool and any undistributed proceeds from previous months, shall be divided during the 10-day period following the end of the month between CCC and certificate holders in the same proportion as the value of CCC's interest in the pool bears to the total value of all certificates outstanding on the last day of the month; *Provided, however,* That such distribution shall not be made if CCC determines that such action is impracticable. That part of the pool proceeds which is to be paid to the certificate holders shall be divided among them in proportion to the total value of the certificates held by each certificate holder, and such payments shall be credited by the custodial office against the certificates held by each certificate holder which have been outstanding for the longest time, except that payments to a Federal Reserve Bank shall be credited on certificates held by the Federal Reserve Bank in accordance with the directions of the Federal Reserve Bank; *Provided, however,* That if such credit would reduce the value of any certificate to less than $100, the payment to the certificate holder may be increased by an amount sufficient to retire the certificate; And *provided further,* That the payment to any certificate holder will not exceed the total value of the certificates which he holds.

(*i*) Any proceeds, notes, and other loan documents remaining in the pool after all of the certificates have been retired shall become the property of CCC.

(*j*) If any certificates have not been retired upon final liquidation of the pool, CCC shall pay to the holders of the certificates the value thereof, plus interest.

5. The Lending Agency shall, upon receipt of instructions from CCC and in accordance with such instructions, deliver warehouse receipts representing cotton on which loans have been made in accordance with the provisions of section 1 hereof, to the warehouse in which the cotton is stored and secure from the warehouseman a receipt, in duplicate, in the form specified by Commodity Credit Corporation for each group of warehouse receipts delivered to the warehouseman. After delivery of such warehouse receipts to the warehouseman, the Lending Agency shall tender the notes evidencing the loans in accordance with the provisions of section 2 hereof, except that they shall be accompanied by the original receipt signed by the warehouseman in lieu of the warehouse receipts and shall be tendered on a separate Lending Agency's Letter of Transmittal from other notes, the duplicate receipt to be retained by the Lending Agency. The Lending Agency shall discontinue the delivery of warehouse receipts to the warehouseman hereunder when instructed to do so by CCC.

6. If a producer desires to obtain a loan hereunder on C. C. C. Cotton Form A prior to the time the loan value of the cotton can be determined and if the producer desires to obtain interim financing from the Lending Agency, the Lending Agency may make a loan (hereinafter called the "advance loan") to the producer on forms and in amounts agreed upon by the Lending Agency and the producer and obtain a duly executed Producer's Power of Attorney (C. C. C. Cotton Form J) from the producer. Advance loans shall not be made to producers whose names appear on the lists of persons indebted to the United States furnished by the county committee unless the producer furnishes evidence that the indebtedness has been satisfied. The duplicate copy of the power of attorney shall be delivered to the producer. On or before the date such loan is made, samples must have been drawn from the cotton and submitted to a Board of Cotton Examiners for classification, or, if the cotton has not arrived at the warehouse, the warehouseman must have been instructed to sample the cotton upon receipt and forward the samples for classification. For the cotton to be eligible for tender to CCC, on or before September 1, 1949, within 15 days after the dates of the classification certificates covering such cotton, or within 15 days after the dates of the warehouse receipts, whichever is later, the Lending Agency must (as provided in the Producer's Power of Attorney), make a loan or loans to the producer under section 1 hereof on all of such cotton which is eligible for a loan, prepare and execute on behalf of the producer Cotton Producer's Note and Loan Agreements evidencing such loans, apply the proceeds of the notes on the advance loan, and disburse any remaining proceeds of the notes in accordance with section 1 hereof. All such notes shall be tendered in accordance with section 2 hereof and shall be accompanied by the applicable Producer's Powers of Attorney. Such notes shall be transmitted on separate letters of transmittal. The Lending Agency shall not obtain a power of attorney on any other form authorizing the Lending Agency to execute Cotton Producer's Note and Loan Agreements on behalf of a producer to whom it makes a private loan.

7. In any case in which the Lending Agency has actual knowledge at the time a loan is made that the borrower is not eligible for a loan hereunder or has made a fraudulent representation in obtaining the loan, the lending Agency shall be liable for any loss incurred as a result of the making of such loan. Tendering the notes evidencing such loan to CCC, an agency of the United States, will also make the Lending Agency or its employees liable to criminal prosecution under 18 U. S. C. 287, 1001, and suit under 31 U. S. C. 231.

8. The Corporation shall have the right to terminate this Agreement by giving the Lending Agency notice in writing, but such termination shall not affect the rights and obligations of the parties hereto with respect to loans made by the lending agency prior to such termination. Upon such termination, the Lending Agency shall cease to make loans hereunder.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the date

tificate may be made. A transfer may be made only by an Assignment of Certificate of Interest (C. C. C. Cotton Form I) and will be effective only upon the receipt and acceptance of such form by the custodial office. An assignment received during the first 10 days of any month will not be effective until the end of such period, and any payment upon the certificate during such period will be made to the transferor rather than the transferee.

If the certificate holder is a member bank of the Federal Reserve System, any number of transfers of the certificate may also be made to and from a Federal Reserve Bank which has entered into an agreement with CCC authorizing the transfer of certificates to the Federal Reserve Bank. Any such transfer will be effective upon receipt by the custodial office of telegraphic advice from the Federal Reserve Bank that the certificate has been so assigned, provided that such advice shall be subsequently confirmed by the submission of a duly executed Assignment of Certificate of Interest, and provided further that payments made on certificates during the first 10 days of any calendar month will be made without regard for any assignment of which advice is received during the same 10-day period.

(*f*) CCC may, and shall upon demand by the certificate holder, purchase any outstanding certificate at any time by paying to the certificate holder the value thereof plus accrued interest. Upon such purchase the certificate shall be canceled by the custodial office, but CCC shall participate in the pool to the same extent as if the certificate had not been canceled.

(*g*) CCC may deposit in the pool any notes held by CCC or other documents evidencing loans made by CCC under such program. No certificate shall be issued to CCC to evidence the deposit of such notes and documents, but CCC shall participate in the pool in the same manner as if a certificate had been issued.

(*h*) The proceeds obtained each month through collection or other appropriate credits to the principal amounts of the notes deposited in the pool and any undistributed proceeds from previous months, shall be divided during the 10-day period following the end of the month between CCC and certificate holders in the same proportion as the value of CCC's interest in the pool bears to the total value of all certificates outstanding on the last day of the month; *Provided, however,* That such distribution shall not be made if CCC determines that such action is impracticable. That part of the pool proceeds which is to be paid to the certificate holders shall be divided among them in proportion to the total value of the certificates held by each certificate holder, and such payments shall be credited by the custodial office against the certificates held by each certificate holder which have been outstanding for the longest time, except that payments to a Federal Reserve Bank shall be credited on certificates held by the Federal Reserve Bank in accordance with the directions of the Federal Reserve Bank; *Provided, however,* That if such credit would reduce the value of any certificate to less than $100, the payment to the certificate holder may be increased by an amount sufficient to retire the certificate; And *provided further,* That the payment to any certificate holder will not exceed the total value of the certificates which he holds.

(*i*) Any proceeds, notes, and other loan documents remaining in the pool after all of the certificates have been retired shall become the property of CCC.

(*j*) If any certificates have not been retired upon final liquidation of the pool, CCC shall pay to the holders of the certificates the value thereof, plus interest.

5. The Lending Agency shall, upon receipt of instructions from CCC and in accordance with such instructions, deliver warehouse receipts representing cotton on which loans have been made in accordance with the provisions of section 1 hereof, to the warehouse in which the cotton is stored and secure from the warehouseman a receipt, in duplicate, in the form specified by Commodity Credit Corporation for each group of warehouse receipts delivered to the warehouseman. After delivery of such warehouse receipts to the warehouseman, the Lending Agency shall tender the notes evidencing the loans in accordance with the provisions of section 2 hereof, except that they shall be accompanied by the original receipt signed by the warehouseman in lieu of the warehouse receipts and shall be tendered on a separate Lending Agency's Letter of Transmittal from other notes, the duplicate receipt to be retained by the Lending Agency. The Lending Agency shall discontinue the delivery of warehouse receipts to the warehouseman hereunder when instructed to do so by CCC.

6. If a producer desires to obtain a loan hereunder on C. C. C. Cotton Form A prior to the time the loan value of the cotton can be determined and if the producer desires to obtain interim financing from the Lending Agency, the Lending Agency may make a loan (hereinafter called the "advance loan") to the producer on forms and in amounts agreed upon by the Lending Agency and the producer and obtain a duly executed Producer's Power of Attorney (C. C. C. Cotton Form J) from the producer. Advance loans shall not be made to producers whose names appear on the lists of persons indebted to the United States furnished by the county committee unless the producer furnishes evidence that the indebtedness has been satisfied. The duplicate copy of the power of attorney shall be delivered to the producer. On or before the date such loan is made, samples must have been drawn from the cotton and submitted to a Board of Cotton Examiners for classification, or, if the cotton has not arrived at the warehouse, the warehouseman must have been instructed to sample the cotton upon receipt and forward the samples for classification. For the cotton to be eligible for tender to CCC, on or before September 1, 1949, within 15 days after the dates of the classification certificates covering such cotton, or within 15 days after the dates of the warehouse receipts, whichever is later, the Lending Agency must (as provided in the Producer's Power of Attorney), make a loan or loans to the producer under section 1 hereof on all of such cotton which is eligible for a loan, prepare and execute on behalf of the producer Cotton Producer's Note and Loan Agreements evidencing such loans, apply the proceeds of the notes on the advance loan, and disburse any remaining proceeds of the notes in accordance with section 1 hereof. All such notes shall be tendered in accordance with section 2 hereof and shall be accompanied by the applicable Producer's Powers of Attorney. Such notes shall be transmitted on separate letters of transmittal. The Lending Agency shall not obtain a power of attorney on any other form authorizing the Lending Agency to execute Cotton Producer's Note and Loan Agreements on behalf of a producer to whom it makes a private loan.

7. In any case in which the Lending Agency has actual knowledge at the time a loan is made that the borrower is not eligible for a loan hereunder or has made a fraudulent representation in obtaining the loan, the lending Agency shall be liable for any loss incurred as a result of the making of such loan. Tendering the notes evidencing such loan to CCC, an agency of the United States, will also make the Lending Agency or its employees liable to criminal prosecution under 18 U. S. C. 287, 1001, and suit under 31 U. S. C. 231.

8. The Corporation shall have the right to terminate this Agreement by giving the Lending Agency notice in writing, but such termination shall not affect the rights and obligations of the parties hereto with respect to loans made by the lending agency prior to such termination. Upon such termination, the Lending Agency shall cease to make loans hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date set forth above.

[fol. 17]

COMMODITY CREDIT CORPORATION

By ______________________________
(Contracting officer)

____
(Lending agency)

ATTEST:

By ______________________________

____
(Title)

____
(Title)

C. C. C. Cotton Form C
U. S. DEPARTMENT OF AGRICULTURE
(6-1-49)
Commodity Credit Corporation

Budget Bureau
Clearance Waived

LENDING AGENCY'S LETTER OF TRANSMITTAL

ORIGINAL

(NOTES WILL BE ACCEPTED ONLY WHEN LISTED ON THIS FORM)

NEW ORLEANS PMA COMMODITY OFFICE, *New Orleans 12, La.:* ______________________, 19____

There are tendered herewith to Commodity Credit Corporation the following notes and collateral documents. The undersigned payee of such notes hereby certifies (a) that the loans evidenced by such notes were made in good faith, without actual knowledge of any liens or encumbrances on the cotton securing such notes, except warehouseman's liens, and in the belief that such cotton was "eligible cotton", as defined in the Cotton Loan Bulletin issued by Commodity Credit Corporation covering such loans; (b) that such notes were not signed in blank and carried by the payee under collateral agreements which permitted the payee to retain the notes, date them at his discretion, and deliver them to Commodity Credit Corporation; (c) that the notes were completed in every detail as of the dates disbursement thereon was made; (d) that there was paid by the undersigned on the dates shown in the notes and in the manner directed by the producers in the spaces provided in such notes, the full amounts of such notes, without any deduction for interest, commission, exchange, or other charges; and (e) that, to the best of the payee's knowledge and belief, the persons who executed the notes were authorized to act in the capacity in which the notes were signed and were entitled to receive the proceeds of the loans.

____
(Lending agency submitting notes)

____
(Address)

____

Submitting Agency's Number

(This form is for use by Lending Agencies tendering producers' notes to Commodity Credit Corporation and must be submitted in quadruplicate. Use only ink, indelible pencil, or typewriter in filling in blanks. The quintuplicate copy is to be retained by the Lending Agency. Prepare separate forms for Upland and American-Egyptian Cotton, for notes secured by warehouse receipts, order bills of lading, and chattel mortgages, and for notes accompanied by powers of attorney.)

SCHEDULE

(Each sheet must contain separate totals for number of notes, face amount of notes, and number of bales)

	Name of Producer	Date of Note	Number of Bales	Face Amount of Note Without Interest
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
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31.				
32.				
33.				
34.				
35.				
36.				
37.				
38.				
39.				
40.				
	TOTAL			
	Corrections and Rejections			
	Accepted			

(Lending agency submitting notes)

(Address)

Submitting Agency's Number

(This form is for use by Lending Agencies tendering producers' notes to Commodity Credit Corporation and must be submitted in quadruplicate. Use only ink, indelible pencil, or typewriter in filling in blanks. The quintuplicate copy is to be retained by the Lending Agency. Prepare separate forms for Upland and American-Egyptian Cotton, for notes secured by warehouse receipts, order bills of lading, and chattel mortgages, and for notes accompanied by powers of attorney.)

SCHEDULE

(Each sheet must contain separate totals for number of notes, face amount of notes, and number of bales)

Name of Producer	Date of Note	Number of Bales	Face Amount of Note Without Interest
1.			
2.			
3			
4.			
5.			
6.			
7.			
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35.			
36.			
37.			
38.			
39.			
40.			
TOTAL			
Corrections and Rejections			
Accepted			

1. You are requested to settle by * payable to

Name of Payee

Address of Payee

Payee Agency's Number

2. Return rejections to

Signature of Lending Agency Submitting Notes

By:

(title)

*Indicate whether cash payment or Certificate of Interest is desired.

be false, fictitious and fraudulent, and, for the purpose of obtaining or aiding to obtain the payment and approval of such claims, used and caused to be used false certificates which it knew to contain false, fraudulent and fictitious statements and entries.

12. At various times in 1949, R. S. Rainwater, Sr., Sloan Rainwater, Jr., and William Rainwater, doing business as R. S. Rainwater & Sons, a partnership, bought one hundred and thirty-five bales of cotton of the 1949 crop from the producers thereof. The purchases were for the account of R. S. Rainwater & Sons. The three Rainwaters knew that upon the consummation of each sale to the Rainwaters the cotton covered thereby became ineligible for use as collateral upon any notes under the Cotton Loan Program.

13. The Rainwaters listed or caused to be listed the one hundred and thirty-five bales of cotton which they had purchased upon ninety-eight notes which they had induced producers to sign in blank, as collateral for 1949 cotton program loans. They listed or caused to be listed the ninety-eight notes upon fourten (sic) lending agency letters of transmittal, representing that loans had been disbursed to the producers named on the notes which in fact that were false. The Rainwaters actually sought CCC loans on the cotton as their property.

14. During the period involved in this action, R. S. Rainwater, Sr. was President of the Citizens National Bank of Walnut Ridge, Arkansas.

15. During the period involved in this action, Sloan Rainwater, Jr. was Assistant Cashier of the Citizens National Bank of Walnut Ridge, Arkansas.

[fol. 28] 16. The Rainwaters presented the fourteen letters of transmittal with the ninety-eight notes, secured by the one hundred and thirty-five bales of ineligible cotton which they had purchased, to the defendant Citizens National Bank. The defendant Bank, with full knowledge of the false nature of the letters of transmittal, the notes, and the ineligibility of the cotton, advanced full payment on the fourteen letters of transmittal to R. S. Rainwater & Sons. The Citizens National Bank and the Rainwaters named the

Bank as payee on each of the fourteen letters of transmittal and both the Bank and the Rainwaters transmitted the letters of transmittal and notes to the Commodity Credit Corporation for payment.

17. The conduct of the defendant was a fraud upon the United States and a violation of the False Claims Act, 31 U.S.C. 231. The defendant knew that the cotton described in the notes was not eligible for pledging under the program, and that the notes did not represent advances made by the Rainwaters as a lending agency to producers of cotton in connection with loans made to the producers under the program and in accordance with the obligations assumed by the Rainwaters under their Lending Agency Agreement described above. The defendant also knew that the following certifications made on each of the letters of transmittal were false, viz: (a) that the loans evidenced by such notes were made in good faith and in the belief that the cotton was eligible; (b) that the notes were not signed in blank and carried by the Rainwaters under collateral agreements which permitted them to retain the notes, date them at their discretion, and deliver them to the Commodity Credit Corporation; (c) that the notes were complete in every detail as to dates disbursement was made hereon; (d) that the Rainwaters had advanced the amounts of the notes to the makers thereof on the dates of the notes; and (e) that the makers of the notes were authorized to act in the capacity [fol. 29] of makers and were entitled to receive the proceeds of the notes. The result of defendant's conduct was that Commodity Credit Corporation accepted the ninety-eight notes listed on the fourteen letters of transmittal and the one hundred thirty-five bales of cotton described as collateral therefore as representing valid transactions under the loan program and paid the defendant the total amount of the notes with interest, when if Commodity Credit Corporation had known the true facts it would have refused to accept the notes or to have paid anything to the defendant on account thereof.

Wherefore, plaintiff demands judgment against the defendant for the amounts provided for in 31 U.S.C. 231.

/s/ Osro Cobb, United States Attorney.

[fol. 30]

Exhibits

Cotton Bulletin 1,
1949 ~~CCC~~ Cotton Form A,
CCC Cotton Form D,
CCC Cotton Form C,
Omitted. Printed side page ~~8~~ 7 ante.

[fol. 31]

In United States District Court

Motion to Dismiss—Filed December 30, 1955

The defendant, Citizens National Bank, moves the Court as follows:

I.

To dismiss the action, because it appears upon the face of the complaint that the Court lacks jurisdiction.

II.

To dismiss the action because the complaint fails to state a claim against this defendant upon which relief can be granted.

Catlett & Henderson, by Leon B. Catlett, 727 Pyramid Life Bldg., Little Rock, Arkansas.

[fol. 32]

In United States District Court

Response to Motion to Dismiss—Filed February 16, 1956

Comes the plaintiff, United States of America, by Osro Cobb, United States Attorney for the Eastern District of Arkansas, and in response to the defendant's Motion to Dismiss, states:

I.

That the Complaint shows affirmatively the jurisdiction of this Court of the subject matter of the action.

II.

That the Complaint states a claim against the defendants upon which the Court can grant relief.

The plaintiff submits that the defendants' motion to dismiss should be denied.

Osro Cobb, United States Attorney, /s/ James W. Gallman, Assistant United States Attorney.

[fol. 33] IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING MOTION TO DISMISS—May 8, 1956

On this day the court takes under consideration the motion of the defendant to dismiss the complaint.

Upon examination of the motion of the defendant, to dismiss the complaint filed on January 5, 1956, the response to the motion filed by the plaintiff on January 16, 1956, and the memorandum brief of the defendant filed at the time of the filing of the motion to dismiss, the court, being well and sufficiently advised, finds that the motion of the defendant should be sustained on the grounds that the court lacks jurisdiction of the subject matter and that the complaint fails to state a claim upon which relief can be granted.

It Is So Ordered on this May 8, 1956.

/s/ Thomas C. Trimble, Chief Judge, United States District Court.

Petition for rehearing covering 8 pages filed May 21, 1957, omitted from this print.

It was denied, and nothing more by order June 17, 1957.

[fol. 34] IN UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 15,659

UNITED STATES OF AMERICA, Appellant,

v.

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, as individuals and as partners, d/b/a R. S. RAINWATER & SONS, Appellees.

Appeal from the United States District Court for the Eastern District of Arkansas.

No. 15,660

UNITED STATES OF AMERICA, Appellant,

v.

CITIZENS NATIONAL BANK, Walnut Ridge, Arkansas, Appellee.

Appeal from the United States District Court for the Eastern District of Arkansas.

Marcus A. Rowden, Attorney, Department of Justice (George Cochran Doub, Assistant Attorney General, Osro Cobb, United States Attorney, and Samuel D. Slade, Attorney, Department of Justice, were with him on the brief), for Appellant.

Catlett & Henderson filed brief for Appellees.

[fol. 35] Before Woodrough, Vogel and Van Oosterhout, Circuit Judges.

OPINION—May 3, 1957

Vogel, Circuit Judge.

The United States brought two separate actions under the Federal False Claims Act, §§3490-3492 and §5438 of the Revised Statutes, 31 U.S.C.A. §§231-233. Both actions were based on alleged false representations made to the Commodity Credit Corporation for the purpose of obtaining loans on cotton. The cases were consolidated and will be treated jointly. Subsequent to the consolidation the defendants made motions to dismiss on two grounds: 1, Lack of jurisdiction of the subject matter; 2, failure to state a claim upon which relief could be granted. Without writing an opinion setting forth its reasons, the District Court granted dismissal and the government brings these appeals.

The briefs and arguments of counsel are confined to two propositions: One, do false claims submitted to wholly owned government corporations, such as Commodity Credit Corporation, come within the purview of the False Claims Act as claims "against the Government of the United States, or any department or officer thereof"? Two, do the complaints state facts upon which relief may be granted where there has been no specific allegation of damage?

The second question requires no prolonged discussion. The complaints, after setting forth in detail the manner in which the defendants procured the "payment and allowance of false and fraudulent claims", (loans on cotton) pray for judgment "for the amounts provided for in 31 U.S.C. 231". 31 U.S.C.A. §231, being the False Claims Act under which the actions were commenced, provides [fol. 36] that the persons doing any of the prohibited acts "shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages". Accordingly, it cannot be said, as claimed by the defendants, that there was no allegation of damage. Certainly by inference, at least, the government asks that in addition to the sum of $2,000.00 it recover double the amount of its damages. Irrespective of that, we believe that even if no damages were shown at the time of trial the United States could still recover the statutorily fixed sum of $2,000.00 for each of the proscribed acts. *United*

States v. *Rohleder,* 1946, 3 Cir., 157 F.2d 126, 129; *United States ex rel. Marcus* v. *Hess,* D.C. Pa., 1941, 41 F.Supp. 197, aff'd 317 U.S. 537. We hold that defendants' second point or contention is unsound.

It is with the first proposition that difficulty arises. The False Claims Act, §3490 of the Revised Statutes, was passed in 1863:

> "Section 3490—Any person * * * who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title 'Crimes', shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

The foregoing §3490 has never been amended, but R. S. 5438, the criminal section referred to therein, has been amended. Prior to the amendment of R. S. 5438 it, insofar as may be pertinent herein, was as follows:

> "Section 5438—Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in [fol. 37] the civil, military, or naval service of the United States, *any claim upon or against the Government of the United States, or any department or officer thereof,* knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim * * * shall be imprisoned * * *." (Emphasis supplied.)

While §5438 was subsequently amended to include "any corporation in which the United States of America is a stockholder", it is well established that subsequent alteration or repeal of a statute previously incorporated by reference in a second statute does not affect the incorporating statute. *United States ex rel. Kessler* v. *Mercur Corp.*, 2 Cir., 1938, 83 F.2d 178, 180:

> "While section 5438 was amended, repealed, and finally since the time when it was referred to in section 3490 superseded by a broader enactment (18 U.S.C.A. §80), it stands, so far as section 3490 is concerned, as it was written when incorporated by reference. * * * It is well settled that where a statute incorporates another, and the one incorporated is thereafter amended or repealed, the scope of the incorporating statute remains intact and 'no subsequent legislation has ever been supposed to affect it.' *Kendall* v. *United States*, 12 Pet. 524, 625, 9 L.Ed. 1181; In re *Heath*, 144 U.S. 92, 93, 94, 12 S.Ct. 615, 36 L.Ed. 358."

Succinctly stated, then, our question is: Do false claims submitted to the Commodity Credit Corporation, a wholly [fol. 38] owned government corporation, come within the meaning of the Federal False Claims Act as being "upon or against the Government of the United States, or any department or officer thereof"?

In a very recent case, *United States* v. *McNinch, et al.*, decided February 28, 1957, . . . F.2d . . ., the Court of Appeals for the Fourth Circuit held that a claim against a government corporation which acts as an agency of the government is not a claim against the government of the United States or a department or officer thereof, " * * * as required by R. S. 5438 as a condition of liability at the time of the adoption of R. S. 3490". It held that the language of the statute was not broad enough to cover such claims. The court gave consideration to the fact that the language of R. S. 3490 was not amended when amendments were made in the language of R. S. 5438 (the criminal statute) to cover the making of false claims against corporations in which the government was a stockholder. It stated, at page 11:

> "If it were the intent of Congress that presentation of false claims against such corporations be redressed by actions for civil penalties or forfeitures, it would have been easy enough to have so provided when the statutes were enacted providing the criminal penalties. Such action by Congress would certainly be more logical and seemly than for the courts to give a forced interpretation to a statute passed three quarters of a century ago when government corporations had not been dreamed of."

We find ourselves in disagreement with the Fourth Circuit case and must decline to follow it. Until *United States* v. *McNinch,* no case had so held. (*United States ex rel. Salzman* v. *Salant & Salant, Inc.,* D.C.N.Y., 1938, 41 F.Supp. 196, cited by the appellees is not in point as it [fol. 39] involves the Red Cross, whose funds are in no sense the property of the United States.) In addition to the cases reversed by *McNinch,* the District Court for the Southern District of New York, in *United States* v. *Samuel Dunkel & Co., Inc.,* D.C.N.Y., 1945, 61 F.Supp. 697, 699, in dealing with alleged frauds in connection with the sale of dried eggs to the Federal Surplus Commodities Corporation, held:

> "The obvious purpose and intent of this statute (Section 231 of Title 31 U.S.C.A., R. S. §3490 and 5438) was to reach any person who knowingly caused or assisted in causing the Government to pay claims which were grounded in fraud, without regard to whether the person had direct contractual relations with the Government, as well as those who receive money from the Government as the result of their fraud. There is not to be so strict a construction as urged by the defendants."

We rely mainly, however, upon *United States ex rel. Marcus* v. *Hess,* 1943, 317 U.S. 537 (cited in the *Samuel Dunkel* case). In doing so, we shall attempt to point out that the ultimate source of payment of the fraudulent claims was the federal treasury and when so viewed there can be no distinction between a government corporation or the government itself being defrauded. In *Marcus* v. *Hess*, supra, the Supreme Court was dealing with the same Acts with which we are here concerned. There the respondents had made claims with local governmental units rather than with the United States government, but a substantial portion of their pay came from the United States for work on PWA projects. The court stated, at page 542:

> "We think the conduct of these respondents comes well within the prohibition of the statute, which includes 'every person who * * * causes to be presented, [fol. 40] for payment * * * any claim upon or against the Government of the United States * * * knowing such claim to be * * * fraudulent'. This can best be seen upon consideration of the exact nature of respondents' relation to the government. *The contracts found to have been induced by the respondents' frauds were made between them and local municipalities and school districts of Allegheny County, Pennsylvania. A large portion of the money paid the respondents under these contracts was federal in origin,* granted by the Federal Public Works Administrator, an official of the United States. 40 U.S.C. 401(a)." (Emphasis supplied.)

Here, *all* of the money paid defendants was "federal in origin". In fact, we do not believe it ever lost federal identity. In reversing the Circuit Court in *Marcus* v. *Hess*, the Supreme Court stated, at page 544:

> "Government money is as truly expended whether by checks drawn directly against the Treasury to the ultimate recipient or by grants in aid to states. While at the time of the passage of the original 1863 Act, federal aid to states consisted primarily of land grants, in subsequent years the state aid program has grown so that in 1941 approximately 10% of all federal money was distributed in this form. These funds are as much in need of protection from fraudulent claims as any other federal money and the statute does not make the extent of their safeguard dependent upon the bookkeeping devices used for their distribution. The Senatorial sponsor of this bill broadly asserted that its

> object was to provide protection against those who would 'cheat the United States'. The fraud here could not have been any more of an effort to cheat the United States if there had been no state intermediary."

The same is true here except instead of a "state intermediary" we have a wholly owned government corpora- [fol. 41] tion set up as a "bookkeeping device" for the handling of government money. After quoting portions of the statute, the Supreme Court continued:

> "These provisions, considered together, indicate a purpose to reach any person who knowingly assisted in causing the government to pay claims which were grounded in fraud, without regard to whether that person had direct contractual relations with the government."

The Commodity Credit Corporation is actually an instrumentality of the United States "within the Department of Agriculture". (15 U.S.C.A. §714) Its entire original capital of $100,000,000.00 was supplied by the United States. 15 U.S.C.A. §714e. The Secretary of the Treasury must make an annual appraisal of the net worth of Commodity Credit Corporation and if the net worth is less than $100,000,000.00 the treasury must restore the amount of capital impairment. 15 U.S.C.A. §713a-1. If the appraisal indicates an excess, the treasury receives such excess. 15 U.S.C.A. §713a-2. Commodity Credit Corporation is authorized to borrow up to $14,500,000,000.00 on the credit of the United States to carry out its statutory programs of making loans on agricultural commodities. 15 U.S.C.A. §713a-4. It seems to us, then, that both as a matter of form and as a matter of substance the alleged false claims were claims against the government of the United States and a department (Department of Agriculture) thereof. The creation of the Commodity Credit Corporation for the handling of government loans on agricultural commodities was a "bookkeeping device" and that fact cannot cover up the substance of that with which we deal. The false claims here were against money appropriated by Congress from the treasury of the United States, to be used in carrying out a governmental [fol. 42] purpose. If that money were exhausted, Congress had arranged for Commodity Credit to borrow on the credit of the United States. As stated by the Supreme Court in *Marcus* v. *Hess,* supra, "these funds are as much in need of protection from fraudulent claims as any other federal money and the statute does not make the extent of their safeguard dependent upon the bookkeeping devices used for their distribution". If the object of the statute was to protect against those who would cheat the United States, then to our minds it is applicable to the instant situation.

In *Marcus* v. *Hess,* supra, the claims were against local municipalities and school districts, but such claims were to be paid from a joint bank account containing both federal and local funds. We believe that situation to be farther removed from the strict statutory language "upon or against the Government of the United States, or any department or officer thereof" than is the situation with which we here deal—a wholly owned governmental corporation set up as a bookkeeping expediency whose *entire* funds are appropriated by the United States, whose profits, if any, go into the treasury of the United States, whose losses are reimbursed from the treasury, and whose actions are binding upon the United States to the extent of many times its capital assets.

In addition to *Marcus* v. *Hess,* supra, we believe the Supreme Court's attitude toward wholly owned government corporations has been reflected in a number of other cases which indicate a tendency to disregard corporate form as a stratagem for the evasion of realities. In *Inland Waterways Corp.* v. *Young,* 1940, 309 U.S. 517, 524, the Supreme Court said:

> "The true nature of these modern devices (government corporations) for carrying out governmental [fol. 43] functions is recognized in other legal relations when realities become decisive. Compare *Clallam County* v. *United States,* 263 U.S. 341; *Emergency Fleet Corp.* v. *Western Union,* 275 U.S. 415. *The funds of these corporations are, for all practical purposes, Government funds;* the losses, if losses there be, are Government's losses." (Emphasis supplied.)

Emergency Fleet Corp. v. *Western Union,* 1928, 275 U.S. 415, 422, 423:

> "It is argued that the government rate should be denied because the Fleet Corporation is a private corporation. In form, it is such. But all of its $50,000,000 capital stock was subscribed and paid by the Shipping Board on behalf of the United States. All has been so held by it ever since. The United States alone has had a financial interest in its capital stock. The United States alone has contributed the additional money needed from time to time for the conduct of its business."
>
> * * * * * * *
>
> "* * * It obviously was not the intention of the Government in employing a corporate agency to deprive itself of the right of priority of transmission and of the lower rates secured through the Post Roads Act."

In *Cherry Cotton Mills* v. *United States,* 1946, 327 U.S. 536, 539, the Supreme Court held that in a suit against the United States the latter could counterclaim for debts owed a government corporation (Reconstruction Finance Corporation), the corporation being considered the government of the United States within the meaning of the counterclaim statute. In speaking of the Reconstruction Finance Corporation, it stated:

> "Its Directors are appointed by the President and confirmed by the Senate; its activities are all aimed [fol. 44] at accomplishing a public purpose; all of its money comes from the Government; its profits, if any, go to the Government; its losses the Government must bear. That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by Government to accomplish purely governmental purposes."

With equal force it can be said here of the Commodity Credit Corporation that "its Directors are appointed by the President and confirmed by the Senate; its activities are all aimed at accomplishing a public purpose; all of its money comes from the Government; its profits, if any, go to the Government; its losses the Government must bear" and "that the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by the Government to accomplish purely governmental purposes" —that of making loans on agricultural commodities to support the economy of the nation. We do not believe therefore that it requires a forced construction to hold that false claims filed against Commodity Credit Corporation fall within the meaning of the Federal False Claims Act as being claims "upon or against the Government of the United States, or any department or officer thereof". We are not dealing with the criminal aspect of a statute requiring "utmost strictness" in construction. The Circuit Court in the *Marcus* v. *Hess* case, supra, construed this particular statute with "utmost strictness". In reversing, the Supreme Court specifically repudiated that "interpretative approach". We are dealing with a civil statute providing forfeitures for the making of false claims paid by the government. It was the fair intendment of Congress to include claims where the source of payment was the treasury of the United States. As we have seen, [fol. 45] state intermediaries, such as local municipalities and school districts, do not constitute a bar. We cannot see how an intermediary such as a wholly owned governmental corporation could cause such false claims to escape the embrace of the statute.

These cases are reversed and remanded for trial.

[fol. 46] IN UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 15659—September Term, 1956.

Friday, May 3, 1957.

UNITED STATES OF AMERICA, Appellant,

v.

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, as individuals and as partners, d/b/a R. S. RAINWATER & SONS.

Appeal from the United States District Court for the Eastern District of Arkansas.

JUDGMENT—May 3, 1957

This cause came on to be heard on the record from the United States District Court for the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed.

And it is further Ordered by this Court that this cause, be, and the same is hereby, remanded to the said District Court for trial.

May 3, 1957.

[fol. 47] IN UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 15660—September Term, 1956.

Friday, May 3, 1957.

UNITED STATES OF AMERICA, Appellant,

v.

CITIZENS NATIONAL BANK, Walnut Ridge, Arkansas.

Appeal from the United States District Court for the Eastern District of Arkansas.

JUDGMENT—May 3, 1957

This cause came on to be heard on the record from the United States District Court for the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed.

And it is further Ordered by this Court that this cause, be, and the same is hereby, remanded to the said District Court for trial.

May 3, 1957.

[fol. 48] IN UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—June 17, 1957

Petition for rehearing filed by appellees in these causes having been considered by this Court, It is now here Ordered that the same be, and it is hereby, denied.

June 17, 1957.

[fol. 49] IN UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Title omitted]

ORDER STAYING ISSUANCE OF MANDATES—June 17, 1957

On Consideration of request of appellees, contained in petition for rehearing, for stay of the mandates in these causes pending petition to the Supreme Court of the United States for writ of certiorari, It is now here Ordered by this Court that the issuance of the mandates herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court certificate of the Clerk of the Supreme Court of the United States that petition for writ of certiorari and record have been filed, the stay hereby granted shall continue until the final disposition of the cases by the Supreme Court.

June 17, 1957.

[fol. 50] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 51] SUPREME COURT OF THE UNITED STATES

No. 276, October Term, 1957

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, as Individuals and as Partners, d/b/a R. S. RAINWATER & SONS, et al., Petitioners,

v.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI—October 14, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted. The case is transferred to the summary calendar and assigned for argument immediately following No. 146.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
JUL 15 1957
JOHN T. FEY, Clerk

No. 276

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1956

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, d/b/a R. S. RAINWATER & SONS .... *Petitioners*

v.

UNITED STATES OF AMERICA .... *Respondent*

and

CITIZENS NATIONAL BANK, WALNUT RIDGE, ARKANSAS .... *Petitioner*

v.

UNITED STATES OF AMERICA .... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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CATLETT & HENDERSON
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PARAGON PRINTING CO., LITTLE ROCK

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No. ....

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1956

R. S. RAINWATER, SR., SLOAN RAINWATER,
JR., WILLIAM RAINWATER, AS INDIVIDUALS
AND AS PARTNERS, d/b/a
R. S. RAINWATER & SONS .... *Petitioners*

v.

UNITED STATES OF AMERICA .... *Respondent*

and

CITIZENS NATIONAL BANK, WALNUT RIDGE,
ARKANSAS .... *Petitioner*

v.

UNITED STATES OF AMERICA .... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Petitioners, R. S. Rainwater, Sr., Sloan Rainwater, Jr., William Rainwater, as individuals and as partners d/b/a R. S. Rainwater & Sons, and Citizens National Bank, Walnut Ridge, Arkansas, pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Eighth Circuit entered in these cases on May 3, 1957.

OPINIONS BELOW

The opinion of the United State District Court for the Eastern District of Arkansas (R.14) was not reported officially. The opinion of the Court of Appeals is not yet reported officially, and is set forth in the appendix, *infra*, pp. 13 to 24.

JURISDICTION

The judgment of the Court of Appeals (App., p. 25) was entered on May 3, 1957. The petition for rehearing was denied on June 17, 1957, and on the same date the mandate was stayed for a period of 30 days to permit the filing of this petition (App., p. 27). The jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1254 (1).

QUESTION PRESENTED

The complaint was brought under Section 231 of Title 31, U.S.C.A., the pertinent part of which reads:

> "Any person . . . who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, . . ."

The notes which are alleged to be fraudulent are claimed to have been transmitted by the Petitioners to Commodity Credit Corporation. The capital stock of Commodity Credit Corporation is owned entirely by the United States.

The question presented is whether Commodity Credit Corporation is the Government of the United States or a department or officer thereof.

STATEMENT

The United States brought two separate actions under the False Claims Act, Section 3490-3492, and Section 5438 of the Revised Statutes, 31 U.S.C.A. 231-233 against R. S. Rainwater, Sr., et al., and the Citizens National Bank of Walnut Ridge, Arkansas, to recover an unspecified amount of money on account of alleged false claims filed by those parties with the Commondity Gredit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, in connection with the 1949 cotton loan program of Commodity Credit Corporation.

The complaints in both of the cases state that the Petitioners caused certain Cotton Producers notes to be transmitted to and paid by Commodity Credit Corporation when the notes were not eligible under the 1949 cotton loan program, but no loss or damage to Commodity Credit Corporation is specified (R.1-6).

The Petitioners in each action filed motions to dismiss, and on May 8, 1956, the United States District Court for the Eastern District of Arkansas sustained the motions. An appeal was then taken to the United States Court of Appeals for the Eighth Circuit which reversed, ruling that the presentation of alleged false claims to Commodity Credit Corporation was both as a matter of form and as a matter of substance a presentation of such claims against the government of the United States and a department (Department of Agriculture) thereof.

REASONS FOR GRANTING THE WRIT

1. The United States Court of Appeals for the Fourth Circuit in the case of *United States of America* v. *Howard A. McNinch*, 242 F(2) 359 on facts identical with those set forth in the complaint in the instant case reached a conclusion exactly opposite the holding of the Eighth

Circuit. Reference will be made later to the reasoning employed in that well considered opinion.

The Eighth Circuit predicated its opinion principally upon the decision in *United States ex rel Marcus* v. *Hess*, 317 U. S. 537, 87 L. Ed. 443. No corporation owned by the Government was involved in that case. There the false claims were made against and paid from funds of Public Works Administration, which was not a separate entity but actually a part of the Government of the United States. Obviously, therefore, the case came within the purview of R. S. 5438. A *corporation* which is an agency and instrumentality of the Government is not the Government or a department of it. This Honorable Court has never deviated from that position, and the lower courts, until the decision by the Eighth Circuit in the instant case, have adhered carefully to such mandate.

In the very early case of *The Bank of the United States* v. *The Planters' Bank of Georgia*, 9 Wheat. 904, 6 L. Ed. 244; this Court said:

> "The state does not, by becoming a corporator, identify itself with the corporation. The Planters' Bank of Georgia is not the state of Georgia, although the state holds an interest in it."

Certainly, The Planters' Bank of Georgia did not become the State of Georgia by virtue of ownership of its stock by the State, and most assuredly Commodity Credit Corporation did not become the United States by reason of its stock being owned by the Government. This Court in *United States of America* v. *James H. Strang*, 254 U. S. 492, 65 L. Ed. 368, held that the United States Shipping Board Emergency Fleet Corporation was a separate entity from the United States, notwithstanding the ownership by the Government of all of its capital stock. We quote:

> "Notwithstanding all its stock was owned by the United States, it (the United States Shipping Board Emergency Fleet Corporation) must be regarded as a separate entity."

Of direct significance is the case of *United States ex rel Skinner & Eddy Corporation* v. *J. R. McCarl*, 275 U. S. 1, 72 L. Ed. 121, wherein a petition for a writ of mandamus was brought to compel the Comptroller General to pass upon claims of Skinner & Eddy Corporation against the United States growing out of contracts the corporation had made with the United States Shipping Board Emergency Fleet Corporation. The Fleet Corporation was organized on April 16, 1917, as an instrumentality of the Government, and all of its stock was owned by the United States. In holding that audit and control of the financial transactions of the Fleet Corporation were committed to its own corporate officers, and not the Comptroller General, the Court said:

> "For the Fleet Corporation is an entity distinct from the United States and from any of its departments or boards. . . ."

Then, this Court in *Reconstruction Finance Corporation* v. *J. G. Menihan Corporation*, 312 U. S. 81, 85 L. Ed. 595, recognized the separate entity of the Reconstruction Finance Corporation from the United States, when, speaking through Mr. Chief Justice Hughes, it affirmed:

> "The Reconstruction Finance Corporation is a corporate agency of the government, which is its sole stockholder. (January 22, 1932) 47 Stat. at L. 5, chap. 8, 15 USCA Sec. 601. It is managed by a board of directors appointed by the President by and with the advice and consent of the Senate. The Corporation has wide powers and conducts financial operations on a vast scale. While it acts as a governmental agency in performing its functions (see *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S.

> 21, 32, 33, 84 L. ed. 11, 16, 17, 60 S. Ct. 15, 124 ALR 1263), still its transactions are akin to those of private enterprises and the mere fact that it is an agency of the government does not extend to it the immunity of the sovereign."

The latest pronouncement of the rule by a Court of Appeals was in *United States of America* v. *Howard A. McNinch, supra.* In that case the Court stated that a claim against a government corporation which acts as an agency of the government manifestly is not a claim against the Government of the United States or a department thereof as required by R. S. 5438 as a condition of liability at the time of the adoption of R. S. 3490. The Court further said:

> "The fact that the government corporations here involved were not in existence at the time of the enactment of R. S. 5438 would not be controlling if the language of the section were broad enough to encompass claims against such corporations; but, as we have seen, the language is not broad enough to cover such claims, however liberal an interpretation be placed upon it. And in this connection we are bound to give consideration to the fact that the language of R. S. 3490 was not amended to cover such claims when amendments were made in the language of R. S. 5438 to cover the making of fraudulent claims against government corporations. Not only is this true, but it is true also that, in subsequent legislation passed to protect government corporations against false and fraudulent claims, criminal penalties were specifically provided but no provision was made for civil penalties or forfeitures. See 18 USC 1010 and 1014. If it were the intent of Congress that presentation of false claims against such corporations be redressed by actions for civil penalties or forfeitures, it would have been easy enough to have so provided when the statutes were enacted providing the criminal penalties. Such action by Congress would certainly be more logical

and seemly than for the courts to give a forced interpretation to a statute passed three quarters of a century ago when government corporations had not been dreamed of."

> "*In such case, civil penalties would properly have been made recoverable by the corporation, not by the United States. The fact that the forfeiture under R. S. 3490 must be recovered in a suit by the United States, and not by the government corporation to which the false claim has been presented, is an additional argument that false claims against such corporations are not comprehended by the statute."

The Third Circuit in *Reconstruction Finance Corporation* v. *Foust Distilling Co.*, 204 F(2) 343, has announced:

> "It has been held that where a government corporation carries on a business, it is an entity separate from the United States."

The case of *Lindgren* v. *U. S. Shipping Board Merchant Fleet Corporation*, 55 F(2) 117, cer. den. 286 U. S. 542, 76 L. Ed. 1280, involved a complaint for wrongful death against the U. S. Shipping Board Merchant Fleet Corporation, the stock of which was owned by the United States, and the Court said:

> "Plaintiff contends, however, that this suit and the former suit are virtually against the same defendant because the United States owns the stock of the Fleet Corporation and the Fleet Corporation is an agency of the United States. This position cannot be sustained. The United States is a sovereign power representing in its corporate capacity the people of the country and immune from suit, except as it may give its consent thereto. The Fleet Corporation is a private corporation of the District of Columbia, created under the laws of the United States, with power to sue and be sued in the same manner as other corporations. *Sloan Shipyards Corp.* v. *U. S. Shipping Board Emergency Fleet*

> *Corporation*, 258 U. S. 549, 568, 42 S. Ct. 386, 66 L. Ed. 762; *U. S. Shipping Board Merchant Fleet Corporation* v. *Harwood*, 281 U. S. 519, 526, 50 S. Ct. 372, 74 L. Ed. 1011. Although the United States owns its stock, it is a distinct entity just as other corporations are distinct from their stockholders. A suit against it is not a suit against the United States, and a suit against the United States is not a suit against it."

In the case of *United States* v. *Skinner & Eddy Corporation*, 28 F(2) 373, modified 35 F(2) 889, cer. dismissed, 281 U. S. 770, 74 L. Ed. 1176, the Ninth Circuit held:

> "When the government leaves its sovereignty and enters the sphere of commercialism, through its private corporate instrumentalities, it places itself within the rules of private parties."

In *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation*, 3 F(2) 154, cer. den. 264 U. S. 586, 68 L. Ed. 264, the District Court for the Eastern District of New York, speaking upon the question of assignments of claims against the Fleet Corporation, said:

> "It is to be observed that assignments of claims against the United States are forbidden. These are claims against the Fleet Corporation, the status of which has been fully described in an opinion written in the action at bar by the Circuit Court of Appeals for this Circuit. 294 F. 641. That corporation is quite a different entity from the United States."

Judge Patterson, United States District Judge for the Southern District of New York, in *United States* v. *Salant & Salant, Inc.*, 41 F. S. 196, a case which has been cited many times, said:

> "A corporation which is an agency of the government is not the government or a department or officer of it."

The United States District Court for the Southern District of Florida in *United States* v. *Brown,* 41 F. S. 838, cited *United States* v. *Strang, supra,* in holding:

> "When a corporation is created for commercial as distinguished from Governmental purposes, it is ordinarily implied in the absence of statutory provisions to the contrary, that such corporation shall have all the requisites and responsibilities of corporate existence, even though the United States owns all the stock. Such a corporation is an entity separate from the United States. *United States* v. *Strang,* 254 U. S. 491, 41 S. Ct. 165, 65 L. Ed. 368."

This Court since 1824 (*The Bank of the United States* v. *The Planters' Bank of Georgia, supra*) has consistently held that ownership by the Government of all of the capital stock of a corporation does not destroy the entity of the corporation; does not endow the corporation with the sovereignty of its owner; and does not merge the Government into the corporation or the corporation into the Government. The Courts of Appeals and the District Courts have observed this rule. A claim against the corporation would be audited and controlled by the officials of the corporation and not by the Comptroller General. If suit were brought upon the claim the suit would be against the corporation and not the United States as owner of all of the corporation stock. A claim presented to the corporation certainly is not a claim against the United States.

We call attention to the ruling of the Attorney General of the United States as announced in Opinion No. 19, 40 *Opinions Attorney General,* 84, 86 (1941). There the question was whether the rule laid down in the McCarl case, *supra,* that the Fleet Corporation was not accountable to the General Accounting Office was applicable to other wholly owned government corporations, and the Attorney General expressed the view that the principles announced in that case were applicable to any corporation owned and operated by the Government, unless the purpose to provide otherwise appeared, either expressly or by implication.

The Departments of Government are listed in Title 5, U. S. C. A., Section 1, to which has been added by amendment the Department of Health, Education and Welfare (1953 Reorganization Plan No. 1, 18 F. R. 2053, 67 Stat. 631). Commodity Credit Corporation, of course, is not included in such enumeration.

2. Title 31, U. S. C. A., Section 231, is a "penal statute" and must be construed strictly. The Court of Appeals for the Second Circuit in *United States ex rel Brensilber* v. *Bausch & Lomb Optical Co.*, 131 F(2) 545, aff. 321 U. S. 711, 88 L. Ed. 417, in a *per curiam* opinion stated:

> ". . . it is not only penal, but drastically penal. *United States* v. *Bittinger*, 24 Fed. Cas. No. 14, 599, p. 1150; *United States* v. *Kansas Pacific Ry. Co.*, 26 Fed. Cas. No. 15, 506, p. 680; *United States* v. *Russell*, D. C., 19 F. 591. For this reason it has been strictly construed."

The same conclusion was reached by the Fifth Circuit in the case of *United States ex rel Ostrager* v. *New Orleans Chapter, Associated General Contractors of America*, 127 F(2) 649. In holding in the case of *United States* v. *National Wholesalers*, 126 F. S. 357, that the plaintiff could not recover under the false claims statute when the defendant supplied to plaintiff regulators equal to the brand specified in the contract between the parties, the Court said:

> "'. . . the False Claims statutes, being 'drastically penal', must be 'strictly construed', *United States ex rel Brensilber v. Bausch & Lomb Optical Co.*, 2 Cir. 1942, 131 F(2) 545, 547, affirmed 1943, 320 U. S. 711, 64 S. Ct. 187, 88 L. Ed. 417."

The same language was employed by the Court in *Cahill v. Curtiss-Wright Corporation,* 57 F. S. 614. We quote:

> "It has been held that the statute being drastically penal should be strictly construed. . . ."

We earnestly insist that Commodity Credit Corporation is not the Government of the United States or a Governmental Department within the intention of Title 31 U. S. C. A., Section 231; that such Section should be construed strictly; and that the District Court was correct in dismissing the complaints herein.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

Leon B. Catlett
E. DeMatt Henderson

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Little Rock, Arkansas
Attorneys for Petitioners

APPENDIX

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,659

United States of America,
Appellant,
vs.
R. S. Rainwater, Sr., Sloan Rainwater, Jr., William Rainwater, as individuals and as partners, d/b/a R. S. Rainwater & Sons,
Appellees.

Appeal from the United States District Court for the Eastern District of Arkansas.

No. 15,660

United States of America,
Appellant,
vs.
Citizens National Bank, Walnut Ridge, Arkansas,
Appellee.

Appeal from the United States District Court for the Eastern District of Arkansas.

[May 3, 1957.]

Marcus A. Rowden, Attorney, Department of Justice (George Cochran Doub, Assistant Attorney General Osro Cobb, United States Attorney, and Samuel D. Slade, Attorney, Department of Justice, were with him on the brief), for Appellant.

Catlett & Henderson filed brief for Appellees.

Before WOODROUGH, VOGEL and VAN OOSTERHOUT, Circuit Judges.

VOGEL, Circuit Judge.

The United States brought two separate actions under the Federal False Claims Act, §§ 3490-3492 and § 5438 of the Revised Statutes, 31 U.S.C.A. §§ 231-233. Both actions were based on alleged false representations made to the Commodity Credit Corporation for the purpose of obtaining loans on cotton. The cases were consolidated and will be treated jointly. Subsequent to the consolidation the defendants made motions to dismiss on two grounds: 1, Lack of jurisdiction of the subject matter; 2, failure to state a claim upon which relief could be granted. Without writing an opinion setting forth its reasons, the District Court granted dismissal and the government brings these appeals.

The briefs and arguments of counsel are confined to two propositions: One, do false claims submitted to wholly owned government corporations, such as Commodity Credit Corporation, come within the purview of the False Claims Act as claims "against the Government of the United States, or any department or officer thereof"? Two, do the complaints state facts upon which relief may be granted where there has been no specific allegation of damage?

The second question requires no prolonged discussion. The complaints, after setting forth in detail the manner in which the defendants procured the "payment and allowance of false and fraudulent claims", (loans on cotton) pray for judgment "for the amounts provided for in 31 U.S.C. 231". 31 U.S.C.A. § 231, being the False Claims Act under which the actions were commenced, provides that the persons doing any of the prohibited acts "shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages" Accordingly, it cannot be said, as claimed by the defendants, that there was no allegation of damage. Certainly by inference, at least, the government asks that in addition to the sum of $2,000.00 it recover double the amount of its damages. Irrespective of that, we believe that even if no damages were shown at the time of trial the United States could still recover the statutorily fixed sum of $2,000.00 for each of the proscribed acts. *United States* v. *Rohleder*, 1946, 3 Cir., 157 F.2d 126, 129; *United States ex rel. Marcus* v. *Hess*, D.C. Pa., 1941, 41 F.Supp. 197, aff'd 317 U.S. 537. We hold that defendants' second point or contention is unsound.

It is with the first proposition that difficulty arises. The False Claims Act, § 3490 of the Revised Statutes, was passed in 1863:

> **"Section 3490—Any person * * * who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title 'Crimes', shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."**

The foregoing § 3490 has never been amended, but R. S. 5438, the criminal section referred to therein, has been amended. Prior to the amendment of R. S. 5438 it, insofar as may be pertinent herein, was as follows:

> **"Section 5438—Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in**

> the civil, military, or naval service of the United States, *any claim upon or against the Government of the United States, or any department or officer thereof,* knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim * * * shall be imprisoned * * *." (Emphasis supplied.)

While § 5438 was subsequently amended to include "any corporation in which the United States of America is a stockholder", it is well established that subsequent alteration or repeal of a statute previously incorporated by reference in a second statute does not affect the incorporating statute. *United States ex rel. Kessler* v. *Mercur Corp.*, 2 Cir., 1938, 83 F.2d 178, 180:

> "While section 5438 was amended, repealed, and finally since the time when it was referred to in section 3490 superseded by a broader enactment (18 U.S.C.A. § 80), it stands, so far as section 3490 is concerned, as it was written when incorporated by reference. * * * It is well settled that where a statute incorporates another, and the one incorporated is thereafter amended or repealed, the scope of the incorporating statute remains intact and 'no subsequent legislation has ever been supposed to affect it.' *Kendall* v. *United States*, 12 Pet. 524, 625, 9 L.Ed. 1181; In re *Heath*, 144 U.S. 92, 93, 94, 12 S.Ct. 615, 36 L.Ed. 358."

Succinctly stated, then, our question is: Do false claims submitted to the Commodity Credit Corporation, a wholly owned government corporation, come within the meaning of the Federal False Claims Act as being "upon or against the Government of the United States, or any department or officer thereof"?

In a very recent case, *United States* v. *McNinch, et al.*, decided February 28, 1957, ... F.2d ..., the Court of Appeals for the Fourth Circuit held that a claim against a government corporation which acts as an agency of the government is not a claim against the government of the United States or a department or officer thereof, "* * * as required by R. S. 5438 as a condition of liability at the time of the adoption of R. S. 3490". It held that the language of the statute was not broad enough to cover such claims. The court gave consideration to the fact that the language of R. S. 3490 was not amended when amendments were made in the language of R. S. 5438 (the criminal statute) to cover the making of false claims against corporations in which the government was a stockholder. It stated, at page 11:

> "If it were the intent of Congress that presentation of false claims against such corporations be redressed by actions for civil penalties or forfeitures, it would have been easy enough to have so provided when the statutes were enacted providing the criminal penalties. Such action by Congress would certainly be more logical and seemly than for the courts to give a forced interpretation to a statute passed three quarters of a century ago when government corporations had not been dreamed of."

We find ourselves in disagreement with the Fourth Circuit case and must decline to follow it. Until *United States* v. *McNinch*, no case had so held. (*United States ex rel. Salzman* v. *Salant & Salant, Inc.*, D.C.N.Y., 1938, 41 F.Supp. 196, cited by the appellees is not in point as it involves the Red Cross, whose funds are in no sense the property of the United States.) In addition to the cases reversed by *McNinch*, the District Court for the Southern District of New York, in *United States* v. *Samuel Dunkel & Co., Inc.*, D.C.N.Y., 1945, 61 F.Supp. 697, 699, in dealing with alleged frauds in connection with the sale of dried eggs to the Federal Surplus Commodities Corporation, held:

> "The obvious purpose and intent of this statute (Section 231 of Title 31 U.S.C.A., R. S. § 3490 and 5438) was to reach any person who knowingly caused or assisted in causing the Government to pay claims which were grounded in fraud, without regard to whether the person had direct contractual relations with the Government, as well as those who receive money from the Government as the result of their fraud. There is not to be so strict a construction as urged by the defendants."

We rely mainly, however, upon *United States ex rel. Marcus* v. *Hess*, 1943, 317 U.S. 537 (cited in the *Samuel Dunkel* case). In doing so, we shall attempt to point out that the ultimate source of payment of the fraudulent claims was the federal treasury and when so viewed there can be no distinction between a government corporation or the government itself being defrauded. In *Marcus* v. *Hess*, supra, the Supreme Court was dealing with the same Acts with which we are here concerned. There the respondents had made claims with local governmental units rather than with the United States government, but a substantial portion of their pay came from the United States for work on PWA projects. The court stated, at page 542:

> "We think the conduct of these respondents comes well within the prohibition of the statute, which includes 'every person who * * * causes to be presented,

> for payment * * * any claim upon or against the Government of the United States * * * knowing such claim to be * * * fraudulent'. This can best be seen upon consideration of the exact nature of respondents' relation to the government. *The contracts found to have been induced by the respondents' frauds were made between them and local municipalities and school districts of Allegheny County, Pennsylvania. A large portion of the money paid the respondents under these contracts was federal in origin,* granted by the Federal Public Works Administrator, an official of the United States. 40 U.S.C. 401(a)." (Emphasis supplied.)

Here, *all* of the money paid defendants was "federal in origin". In fact, we do not believe it ever lost federal identity. In reversing the Circuit Court in *Marcus* v. *Hess*, the Supreme Court stated, at page 544:

> "Government money is as truly expended whether by checks drawn directly against the Treasury to the ultimate recipient or by grants in aid to states. While at the time of the passage of the original 1863 Act, federal aid to states consisted primarily of land grants, in subsequent years the state aid program has grown so that in 1941 approximately 10% of all federal money was distributed in this form. These funds are as much in need of protection from fraudulent claims as any other federal money and the statute does not make the extent of their safeguard dependent upon the bookkeeping devices used for their distribution. The Senatorial sponsor of this bill broadly asserted that its object was to provide protection against those who would 'cheat the United States'. The fraud here could not have been any more of an effort to cheat the United States if there had been no state intermediary."

The same is true here except instead of a "state intermediary" we have a wholly owned government corporation set up as a "bookkeeping device" for the handling of government money. After quoting portions of the statute, the Supreme Court continued:

> "These provisions, considered together, indicate a purpose to reach any person who knowingly assisted in causing the government to pay claims which were grounded in fraud, without regard to whether that person had direct contractual relations with the government."

The Commodity Credit Corporation is actually an instrumentality of the United States "within the Department of Agriculture". (15 U.S.C.A. § 714) Its entire original capital of $100,000,000.00 was supplied by the United States. 15 U.S.C.A. § 714e. The Secretary of the Treasury must make an annual appraisal of the net worth of Commodity Credit Corporation and if the net worth is less than $100,000,000.00 the treasury must restore the amount of capital impairment. 15 U.S.C.A. § 713a-1. If the appraisal indicates an excess, the treasury receives such excess. 15 U.S.C.A. § 713a-2. Commodity Credit Corporation is authorized to borrow up to $14,500,000,000.00 on the credit of the United States to carry out its statutory programs of making loans on agricultural commodities. 15 U.S.C.A. § 713a-4. It seems to us, then, that both as a matter of form and as a matter of substance the alleged false claims were claims against the government of the United States and a department (Department of Agriculture) thereof. The creation of the Commodity Credit Corporation for the handling of government loans on agricultural commodities was a "bookkeeping device" and that fact cannot cover up the substance of that with which we deal. The false claims here were against money appropriated by Congress from the treasury of the United States, to be used in carrying out a governmental purpose.

If that money were exhausted, Congress had arranged for Commodity Credit to borrow on the credit of the United States. As stated by the Supreme Court in *Marcus* v. *Hess*, supra, "these funds are as much in need of protection from fraudulent claims as any other federal money and the statute does not make the extent of their safeguard dependent upon the bookkeeping devices used for their distribution". If the object of the statute was to protect against those who would cheat the United States, then to our minds it is applicable to the instant situation.

In *Marcus* v. *Hess*, supra, the claims were against local municipalities and school districts, but such claims were to be paid from a joint bank account containing both federal and local funds. We believe that situation to be farther removed from the strict statutory language "upon or against the Government of the United States, or any department or officer thereof" than is the situation with which we here deal—a wholly owned governmental corporation set up as a bookkeeping expediency whose *entire* funds are appropriated by the United States, whose profits, if any, go into the treasury of the United States, whose losses are reimbursed from the treasury, and whose actions are binding upon the United States to the extent of many times its capital assets.

In addition to *Marcus* v. *Hess*, supra, we believe the Supreme Court's attitude toward wholly owned government corporations has been reflected in a number of other cases which indicate a tendency to disregard corporate form as a stratagem for the evasion of realities. In *Inland Waterways Corp.* v. *Young*, 1940, 309 U.S. 517, 524, the Supreme Court said:

> "The true nature of these modern devices (government corporations) for carrying out governmental

> functions is recognized in other legal relations when realities become decisive. Compare *Clallam County* v. *United States,* 263 U.S. 341; *Emergency Fleet Corp.* v. *Western Union,* 275 U.S. 415. *The funds of these corporations are, for all practical purposes, Government funds;* the losses, if losses there be, are Government's losses." (Emphasis supplied.)

Emergency Fleet Corp. v. *Western Union,* 1928, 275 U.S. 415, 422, 423:

> "It is argued that the government rate should be denied because the Fleet Corporation is a private corporation. In form, it is such. But all of its $50,000,000 capital stock was subscribed and paid by the Shipping Board on behalf of the United States. All has been so held by it ever since. The United States alone has had a financial interest in its capital stock. The United States alone has contributed the additional money needed from time to time for the conduct of its business."

* * * * * * *

> "* * * It obviously was not the intention of the Government in employing a corporate agency to deprive itself of the right of priority of transmission and of the lower rates secured through the Post Roads Act."

In *Cherry Cotton Mills* v. *United States,* 1946, 327 U.S. 536, 539, the Supreme Court held that in a suit against the United States the latter could counterclaim for debts owed a government corporation (Reconstruction Finance Corporation), the corporation being considered the government of the United States within the meaning of the counterclaim statute. In speaking of the Reconstruction Finance Corporation, it stated:

> "Its Directors are appointed by the President and confirmed by the Senate; its activities are all aimed

> at accomplishing a public purpose; all of its money comes from the Government; its profits, if any, go to the Government; its losses the Government must bear. That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by Government to accomplish purely governmental purposes."

With equal force it can be said here of the Commodity Credit Corporation that "its Directors are appointed by the President and confirmed by the Senate; its activities are all aimed at accomplishing a public purpose; all of its money comes from the Government; its profits, if any, go to the Government; its losses the Government must bear" and "that the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by the Government to accomplish purely governmental purposes"—that of making loans on agricultural commodities to support the economy of the nation. We do not believe therefore that it requires a forced construction to hold that false claims filed against Commodity Credit Corporation fall within the meaning of the Federal False Claims Act as being claims "upon or against the Government of the United States, or any department or officer thereof". We are not dealing with the criminal aspect of a statute requiring "utmost strictness" in construction. The Circuit Court in the *Marcus* v. *Hess* case, supra, construed this particular statute with "utmost strictness". In reversing, the Supreme Court specifically repudiated that "interpretative approach". We are dealing with a civil statute providing forfeitures for the making of false claims paid by the government. It was the fair intendment of Congress to include claims where the source of payment was the treasury of the United States. As we have seen, state intermediaries, such as local municipalities and school districts, do not constitute a bar. We cannot see how an intermediary such as a wholly owned governmental corporation could cause such false claims to escape the embrace of the statute.

These cases are reversed and remanded for trial.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

(*Judgment in Cause No. 15659.*)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 15659 September Term, 1956.
Friday, May 3, 1957.

United States of America,
Appellant

v.

R. S. Rainwater, Sr., Sloan Rainwater, Jr., William Rainwater, as individuals, and as partners, d/b/a R. S. Rainwater & Sons.

Appeal from the United States District Court for the Eastern District of Arkansas.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Arkansas and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that judgment of the said District Court, in this cause, be, and the same is hereby, reversed.

And it is further Ordered by this Court that this cause, be, and the same is hereby, remanded to the said District Court for trial.

May 3, 1957.

(*Judgment in Cause No.* 15660.)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 15660 .... September Term, 1956.
Friday, May 3, 1957.

United States of America,
Appellant,
v.
Citizens National Bank, Walnut Ridge, Arkansas.

Appeal from the United States District Court for the Eastern District of Arkansas.

This cause same on to be heard on the record from the United State District Court for the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed..

And it is further Ordered by this Court that this cause, be, and the same is hereby, remanded to the said District Court for trial.

May 3, 1957.

(Order denying Petition of Appellees for Rehearing in Causes Nos. 15659 *and* 15660.)

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

September Term, 1956.
Monday, June 17, 1957.

United States of America, Appellant, No. 15659. v. R. S. Rainwater, Sr., et al.	Appeal from the United States District Court for the Eastern District of Arkansas.
United States of America, Appellant, No. 15660. v. Citizens National Bank, Walnut Ridge, Arkansas.	Appeal from the United States District Court for the Eastern District of Arkansas.

Petition for rehearing filed by appellees in these causes having been considered by this Court, It is now here Ordered that the same be, and it is hereby, denied.

June 17, 1957.

(Order Staying Issuance of Mandates in Causes Nos. 15659 *and* 15660.)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

September Term, 1956.
Monday, June 17, 1957.

United States of America,
Appellant,
No. 15659. v.
R. S. Rainwater, Sr., et al.

Appeal from the United States District Court for the Eastern District of Arkansas.

United States of America,
Appellant,
No. 15660. v.
Citizens National Bank, Walnut Ridge, Arkansas.

Appeal from the United States District Court for the Eastern District of Arkansas.

On Consideration of request of appellees, contained in petition for rehearing, for stay of the mandates in these causes pending petition to the Supreme Court of the United States for writ of certiorari, It is now here Ordered by this Court that the issuance of the mandates herein be, and the same is hereby, stayed for a period of 30 days from and after this date, and if within said period of 30 days there is filed with the Clerk of this Court certificate of the Clerk of the Supreme Court of the United States that petition for writ of certiorari and record have been filed, the stay hereby granted shall continue until the final disposition of the cases by the Supreme Court.

June 17, 1957.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 276

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, D/B/A R. S. RAINWATER & SONS, AND CITIZENS NATIONAL BANK, WALNUT RIDGE, ARKANSAS, ... *Petitioners*

v.

UNITED STATES OF AMERICA .... *Respondent*

BRIEF FOR PETITIONERS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 276

R. S. RAINWATER, SR., SLOAN RAINWATER, JR.,
WILLIAM RAINWATER, AS INDIVIDUALS AND AS
PARTNERS, D/B/A R. S. RAINWATER & SONS,
AND CITIZENS NATIONAL BANK, WALNUT RIDGE,
ARKANSAS, ... *Petitioners*

v.

UNITED STATES OF AMERICA .... *Respondent*

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the District Court is unreported (R. 18,25). The opinion of the Court of Appeals is reported in 244 F.(2) 27 (R.26-35).

JURISDICTION

The judgment of the Court of Appeals was entered on May 3, 1957 (R.36,37). The order of the Court of Appeals denying petition for rehearing was entered on June 17, 1957 (R.37). An order staying the issuance of mandates was entered by the Court of Appeals on June 17, 1957 (R.38). An order allowing certiorari was entered by this Court on October 14, 1957 (R.38), 2 L. Ed. (2) 21. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

STATUTES INVOLVED

1. Sections 3490 and 5438 of the Revised Statutes (now combined as 31 U. S. C. 231) read in part as follows:

> *Section* 3490—"Any person . . . who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title "Crimes", shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."
>
> *Section* 5438—"Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition knowing the same to contain any fraudulent or fictitious statement or entry . . . shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars."

2. Section 714 of Title 15 U. S. C. (62 Stat. 1070) reads:

> "For the purpose of stabilizing, supporting, and protecting farm income and prices, of assisting in the maintenance of balanced and adequate sup-

plies of agricultural commodities, products thereof, foods, feeds, and fibers (hereinafter collectively referred to as 'agricultural commodities'), and of facilitating the orderly distribution of agricultural commodities, there is created a body corporate to be known as Commodity Credit Corporation (hereinafter referred to as the 'Corporation'), which shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general direction and control of its Board of Directors."

3. Section 80 of Title 18 (35 Stat. 1095) provides:

> "Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; . . ."

4. Section 287 of Title 18 (62 Stat. 698) reads:

> "Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

5. Section 1001 of Title 18 (62 Stat. 749) provides:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent

> statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

6. Section 6 of Title 18 (62 Stat. 685) states:

"As used in this title:

. . . . .

> "The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.".

QUESTION PRESENTED

1. Whether Commodity Credit Corporation is the Government of the United States or a department or officer thereof and therefore authorized to sue under the provisions of Section 231, Title 31 U.S.C.

STATEMENT

The United States brought two separate actions under the False Claims Act, Section 3490 and Section 5438 of the Revised Statutes (31 U.S.C. 231-233) against R. S. Rainwater, Sr., et al and the Citizens National Bank of Walnut Ridge, Arkansas, to recover an unspecified amount of money on account of alleged false claims filed by those parties with the Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, in connection with the 1949 cotton loan program of Commodity Credit Corporation.

The complaints in both of the cases state that the Petitioners caused certain Cotton Producers notes to be transmitted to and paid by Commodity Credit Corporation when the notes were not eligible under the 1949 cotton loan program, but no loss or damage to Commodity Credit Corporation is claimed (R.1-6, 18-23).

The Petitioners in each action filed motions to dismiss, and on May 8, 1956, the United States District Court for the Eastern District of Arkansas sustained the motions. An appeal was then taken to the Court of Appeals for the Eighth Circuit, which declined to follow *United States* v. *McNinch*, (C.C.A. 4), 242 F(2) 359, and reversed the District Court, ruling that the presentation of alleged false claims to Commodity Credit Corporation was a presentation of such claims against the Government of the United States or department (Department of Agriculture) or officer thereof (R.26-39). Certiorari was granted by this Court, 2 L. Ed. (2) 21.

SUMMARY OF ARGUMENT

Title 31 U.S.C., Section 231, upon which the complaints are grounded, provides for the recovery by the Government of damages and penalties for the presentation of false claims "upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious or fraudulent". The alleged false claims which form the basis for the instant case were presented to the Commodity Credit Corporation, "an agency and instrumentality of the United States with the Department of Agriculture" (R.2,19).

It is the contention of Petitioners that Commodity Credit Corporation is not the Government of the United States or a department or officer thereof, and consequently a suit by it under Section 231, Title 31 U.S.C. is not maintainable. This Court has many times recognized the separate entity from the United States of a corporation whose stock is owned entirely by the Government. Further, when Congress provided by R. S. 3490 for suits based upon acts denounced by R. S. 5438, the last mentioned section did not include false claims presented to "any corporation in which the United States of America is a stockholder", and it was not until March 4, 1909 (the date of enactment of Section 80, Title 18 U.S.C. which has now become Sections 287 and 1001, Title U.S.C.) that such addition was made to R. S. 5438. The addition, of course, did not affect R. S. 3490 and, therefore, its scope is limited to false claims presented to the Government or a department of the Government. Commodity Credit Corporation is neither.

ARGUMENT

I

Section 231, Title 31 U.S.C. Does Not Encompass False Claims Presented to Commodity Credit Corporation

The sole and only allegation of the complaints whereby an attempt is made to come within the scope of Section 231, Title 31, U.S.C., is that the Commodity Credit Corporation, an agency and instrumentality of the United States (not the Government) accepted from the Petitioners fourteen transmittal letters on which were listed ninety-eight notes securing one hundred and thirty-five purportedly ineligible bales of cotton and paid the Petitioners the amount of the notes and interest, when if Commodity Credit Corporation (not the Government) had known the allegedly true facts it would have refused to accept the notes or pay anything to the Petitioners on account thereof.

The pertinent part of Section 231, *supra,* reads:

> "Any person . . . who shall make or cause to be made, or present or cause to be presented, for payment and approval, to or by any person or officer in the civil, military or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent. . . ."

The section, a part of which is quoted above, originated by *Act of March* 2, 1863, 12 Stat. 696, which provided for both criminal penalties and civil recovery for the commission of certain acts. The civil liability portion of the Act was subsequently codified as Section 3490 of the *Revised Statutes,* and the criminal portion was codified as Section 5438. Section 3490 provided for forfeitures and double damages if the acts prohibited by

R. S. 5438 should be committed. Section 5438 denounced the presentation of false claims against the "Government of the United States or any department or officer thereof". In 1909, R. S. 5438 was repealed (35 Stat. 1153), and superseded by Section 35 of *the Criminal Code* (Section 80, Title 18) which with various amendments is now divided into Sections 287 and 1001, Title 18.

The incorporation by reference in R. S. 3490 of acts prohibited by R. S. 5438 was entirely proper but subsequent changes in R. S. 5438 did not become a part of R. S. 3490. In the very early case of ***Kendall* v. *United States*,** 12 Pet. 524, 9 L. Ed. 1181, Mr. Justice Thompson pointed out that it is permissible and not an uncommon practice for a legislative body to adopt by reference other legislative acts, but "such adoption has always been considered as referring to the law existing at the time of adoption; and no subsequent legislation has ever been supposed to affect it. And such must necessarily be the effect and operation of such adoption. No other rule would furnish any certainty as to what was the law, and would be adopting prospectively all changes that might be made in the law." This statement was referred to with approval by this Court in the case of *In re Heath*, 144 U.S. 92, 36 L. Ed. 358. We quote:

> "And the adoption in a local law of the provisions of a general law does not carry with it the adoption of changes afterwards made in the general law."

In treating with the question the Court of Appeals for the Second Circuit in *United State ex rel Kessler* v. *Mercur Corp.*, 83 F(2) 178, cer. den. 299 U. S. 576, 81 L. Ed. 424, stated:

> "While Section 5438 was amended, repealed, and finally since the time it was referred to in Section 3490 superseded by a broader enactment

> (18 U.S.C.A. 80), it stands, so far as Section 3490 is concerned, as it was written when incorporated by reference."

Now, then, Congress in repealing R. S. 5438, realized that the presentation of a false claim against the "Government of the United States or any department or officer thereof" did not cover the presentation of a false claim to a corporation in which the United States was a stockholder because Section 35 of the *Criminal Code* (Section 80, Title 18 U.S.C.), which replaced R. S. 5438, was a "broader enactment" (*United States ex rel Kessler* v. *Mercur Corp., supra*), and such enactment expressly provided against the presentation to any "person or officer in the civil, military or naval service of the United States, or any department thereof, *or any corporation in which the United States of America is a stockholder* any claim upon or against the Government of the United States, or any department or officer thereof, *or any corporation in which the United States of America is a stockholder*, knowing such claim to be false, fictitious or fraudulent". When Section 35 of the *Criminal Code* was superseded by Sections 287 and 1001 of Title 18 U.S.C., the words "or any corporation in which the United States of America is a stockholder" were omitted as unnecessary in view of Section 6, Title 18 U.S.C., which defines "agency" as including any corporation in which the United States has a proprietary interest. It is readily seen, therefore, that Congress expanded the provisions contained in R. S. 5438 when enacting Section 35 of the *Criminal Code* and Sections 287 and 1001, Title 18. We first quote from Section 287 as follows:

> "Whoever makes or presents to any person or officer in the civil, military or naval service of the United States, or to any department *or agency thereof*, any claim upon or against the United

> States, or any department *or agency thereof. ...*"
> (Italics supplied.)

And Section 1001, Title 18, reads in part:

> "Whoever, *in any matter within the jurisdiction of any* department *or agency of* the United States knowingly or wilfully ..." (Italics supplied.)

It is noted of course that R. S. 5438 contained no reference to the presentation of a false claim to "a corporation in which the United States is a stockholder", or to an "agency of the United States". Congress evidently felt that R. S. 5438 was deficient in not providing against the presentation of false claims to bureaus, agencies, instrumentalities and corporations in which the United States held a proprietary interest and cured such deficiency by the new legislation on the subject to which we have just referred. Nevertheless, it is R. S. 5438 which was incorporated by reference into R. S. 3490 (Section 231, Title 31), and such statute embraces the presentation of false claims only against the "Government of the United States, or any department or officer thereof". It is seen, then, that suits by the United States predicated upon Section 3490 of the Revised Statutes (Section 231 of Title 31) are limited to false claims presented as provided by the explicit and restricted terms of Section 5438 and cannot include false claims presented to Commodity Credit Corporation, whether it be denominated an agency or instrumentality of the United States or a corporation in which the United States is a stockholder.

In *United States* v. *McNinch*, 242 F. (2) 359 (CCA 4), the question presented was identical to the one involved here. That Court held that the Commodity Credit Corporation was not "the government of the United States, or any department or officer thereof'' within the meaning of the False Claims Act. It reasoned that since Section 5438 of the Revised Statutes was amended to include false claims against government corporations, and since that amendment did not affect Section 3490, which was not amended correspondingly, the prohibition of false claims against government corporations was not within the scope of the False Claims Act. We quote from that opinion:

> ''The question, then, is narrowed to this: Is a claim against a government corporation, which acts as an agency of the government, a claim against the government of the United States or a department or officer thereof as required by R. S. Sec. 5438 as a condition of liability at the time of the adoption of R. S. Sec. 3490? The answer is manifestly that it is not such a claim. A government corporation, even though acting as an agency of the government is not the government, nor is it a department or officer of the government.''

The decision handed down in the instant case by the Court of Appeals for the Eighth Circuit was reviewed in the January, 1958, issue of Columbia Law Review (58 C.L.R. 118). There this comment is found:

> ''On the other hand, the decision appears questionable in that it contradicts an established rule of statutory construction. The argument advanced in the *McNinch* case, which the instant court failed to answer, seems legally irrefutable. Where the criminal statute was subsequently amended to extend its prohibitions to false claims against government corporations, it is probable that Congress thought that the scope of the original enactment which incorporated the criminal act before its amendment did not include such a prohibition. Thus it seems that before the False Claims Act can properly apply to the CCC, Congress must so provide.''

II

Commodity Credit Corporation Is Not the Government of the United States or a Department or an Officer Thereof

We reiterate that Section 231 of Title 31 provides that suit may be brought on account of the presentation of any false claim against "the Government of the United States or any department or officer thereof". Particular notice should be given to the fact that neither of the words "agency or instrumentality" are used. Section 714, Title 15, states:

> ". . . there is created a body corporate to be known as Commodity Credit Corporation (hereinafter referred to as the 'Corporation') which shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general direction and control of its Board of Directors."

Further, Section 714(b), Title 15, recites that the Corporation (a) shall have succession in its corporate name, (b) may adopt, alter and use a corporate seal, (c) may sue and be sued, (d) may adopt, amend and repeal by-laws, (e) shall have all rights, privileges and immunities of the United States with respect to priority of payments from insolvent, deceased or bankrupt debtors, (f) shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Federal Government, (g) may enter into and carry out such contracts or agreements as are necessary in the conduct of its business, (h) may borrow money, (i) shall determine the necessity for its obligations and expenditures, (j) shall have authority to make final and conclusive settlement of any claims by or against the Corporation, (k) may make loans and advances, and (l) shall possess all incidental powers of corporations generally.

In the very early case of *The Bank of the United States* v. *The Planters' Bank of Georgia*, 9 Wheat. 904. 6 L. Ed. 244, this Court announced the rule, from which it has not departed, as follows:

> "The state does not, by becoming a corporator, identify itself with the corporation. The Planters' Bank of Georgia is not the state of Georgia, although the state holds an interest in it."

The rule was reaffirmed in *United States of America* v. *James H. Strang*, 254 U. S. 492, 65 L. Ed. 368. There it was held that the United States Shipping Board Emergency Fleet Corporation was a separate entity from the United States, notwithstanding the ownership by the Government of all of its capital stock. We quote:

> "Notwithstanding ~~all~~ of its stock was owned by the United States, it (the United States Shipping Board Emergency Fleet Corporation) must be regarded as a separate entity."

Of direct significance is the case of *United States ex rel Skinner & Eddy Corporation* v. *J. R. McCarl,* 275 U. S. 1, 72 L. Ed. 131, wherein a petition for a writ of mandamus was brought to compel the Comptroller General to pass upon claims of Skinner & Eddy Corporation against the United States growing out of contracts the corporation had made with the United States Shipping Board Emergency Fleet Corporation. The Fleet Corporation was organized on April 16, 1917, as an instrumentality of the Government, and all of its stock was owned by the United States. In affirming the dismissal of the petition this Court held that the audit and control of the financial transactions of the Fleet Corporation were committed to its own corporate officers and not the Comptroller General, saying:

> "For the Fleet Corporation is an entity distinct from the United States and from any of its departments or boards. . . ."

In Opinion No. 19, 40 *Opinions Attorney General*, 84, 86, (1941), the Attorney General considered the question whether the rule laid down in the McCarl case, *supra,* that the Fleet Corporation was not accountable to the General Accounting Office, applied to other wholly owned government corporations, and expressed the view that the principles announced in that case were applicable to any corporation owned and operated by the Government, unless the purpose to provide otherwise appeared, either expressly or by implication.

Neither expressly nor by implication can the words "a corporation in which the United States is a stockholder" be read into R. S. 5438. In *Keifer & Keifer* v. *Reconstruction Finance Corporation,* 306 U. S. 381, 83 L. Ed. 784, this Court stated that federal agencies and instrumentalities do not acquire the Government's immunity from suit merely because they do its work. We quote:

> "Therefore, the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. *United States* v. *Lee,* 106 U. S. 196, 213, 221, 27 L. Ed. 171, 179, 182, 1 S. Ct. 240; *Sloan Shipyards Corp.* v. *United States Shipping Bd. Emergency Fleet Corp.,* 258 U. S. 549, 567, 66 L. Ed. 762, 768, 42 S. Ct. 386, 48 Am. Bankr. Rep. 249. For more than a hundred years corporations have been used as agencies for doing work of the government. Congress may create them 'as appropriate means of executing the powers of government, as, for instance, . . . a railroad corporation for the pur-

> pose of promoting commerce among the states.' *Luxton* v. *North River Bridge Co.,* 153 U. S. 525, 529, 38 L. Ed. 808, 810, 14 S. Ct. 891. But this would not confer on any such corporations legal immunity even if the conventional to-sue-and-be-sued clause were omitted."

Keifer & Keifer, supra, was cited with approval in *Reconstruction Finance Corporation* v. *J. G. Menihan Corporation,* 312 U. S. 81, 85 L. Ed. 595. This Court again recognized the separate entity of the corporation from the United States when it spoke through Mr. Chief Justice Hughes as follows:

> "The Reconstruction Finance Corporation is a corporate agency of the government, which is its sole stockholder. (January 22, 1932) 47 Stat. at L. 5, chap. 8, 15 USCA Sec. 601. It is managed by a board of directors appointed by the President by and with the advice and consent of the Senate. The Corporation has wide powers and conducts financial operations on a vast scale. While it acts as a governmental agency in performing its functions (see *Pittman* v. *Home Owners' Loan Corp.,* 308 US 21, 32, 33, 84 L. Ed. 11, 16, 17, 60 S. Ct. 15, 124 ALR 1263), still its transactions are akin to those of private enterprises and the mere fact that it is an agency of the government does not extend to it the immunity of the sovereign."

It is seen that this Court has repeatedly announced that "a corporation in which the United States is a stockholder" such as the Emergency Fleet Corporation and Reconstruction Finance Corporation is a separate and distinct entity from the Government of the United States. Congress saw fit to create Commodity Credit Corporation as a separate entity so that it could enjoy the special privileges granted. It must also be restricted as a separate entity from the Government of the United States as this Court did the Emergency Fleet Corporation and the Reconstruction Finance Corporation. Many times the various Courts of Appeals have followed the mandate of this Court on this question and certiorari has been denied, thus reinforcing the position of Petitioners. There are also numerous decisions of District Courts to the same effect, but we will only refer to those in the former classification. One of the earliest of such cases is that of *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation,* 294 F. 641 (CCA 2), cer. den. 264 U. S. 586, 68 L. Ed. 862, wherein the court in holding that the United States Shipping Board Emergency Fleet Corporation constituted a distinct entity from the United States, said:

> "But while the Fleet Corporation may have been created and controlled by the government for its own purpose, it by no means follows that such a corporation is in effect the government, and so not subject to the rules of law governing other corporations. A government, engaging in a particular business through the instrumentality of a corporation, may divest itself *pro hac vice* of its sovereign character, so as to render the corporation liable in the same way that a private corporation is liable."

In the case of *United States* v. *Skinner & Eddy Corporation,* 28 F(2) 373 (CCA 9), modified 35 F.(2) 889, cer. dismissed, 281 U. S. 770, 74 L. Ed. 1176, the Court of Appeals for the Ninth Circuit stated that the United States Shipping Board Emergency Fleet Corporation could sue and be sued; its employees were not subject to provisions of the criminal code as were government agents; and it was an instrumentality of the United States, but it did not possess the attributes of sovereignty because:

> "When the government leaves its sovereignty and enters the sphere of commercialism, through its private corporate instrumentalities, it places itself within the rules of private parties."

The case of *Lindgren* v. *U. S. Shipping Board Merchant Fleet Corporation,* 55 F(2) 117 (CCA 4), cer. den. 286 U. S. 542, 70 L. Ed. 1280, involved a complaint for wrongful death against the U. S. Shipping Board Merchant Fleet Corporation, the stock of which was owned by the United States, and the Court said:

> "Plaintiff contends, however, that this suit and the former suit are virtually against the same defendant because the United States owns the stock of the Fleet Corporation and the Fleet Corporation is an agency of the United States. This position cannot be sustained. The United States is a sovereign power representing in its corporate capacity the people of the country and immune from suit, except as it may give its consent thereto. The Fleet Corporation is a private corporation of the District of Columbia, created under the laws of the United States, with power to sue and be sued in the same manner as other corporations. *Sloan Shipyards Corp.* v. *U. S. Shipping Board Emergency Fleet Corporation,* 258 U. S. 549, 568, 42 S. Ct. 386, 66 L. Ed. 762; *U. S. Shipping Board Merchant Fleet Corporation* v. *Harwood,* 281 U. S. 519, 526, 50 S. Ct. 372, 74 L. Ed. 1011. Although the United States owns its stock, it is a distinct entity just as other corporations are distinct from their stockholders. A suit against it is not a suit against the United States, and a suit against the United States is not a suit against it."

A late decision by the Third Circuit is that of *Reconstruction Finance Corporation* v. *Foust Distilling Co.,* 204 F(2) 343 (CCA 3): The court cited many decisions of this Court as authority for the statement:

> "It has been held that where a government corporation carries on a business, it is an entity separate from the United States."

The latest pronouncement upon the subject by a Court of Appeals, other than the decision by the Eighth Circuit in the instant case, was in the case of *United States of America* v. *Howard A. McNinch, supra.* In that case the court stated that a claim against a government corporation which acts as an agency of the government manifestly is not a claim against the Government of the United States or a department thereof as required by R. S. 5438 as a condition of liability at the time of the adoption of R. S. 3490. The Court further said:

> "The fact that the government corporations here involved were not in existence at the time of the enactment of R. S. 5438 would not be controlling if the language of the section were broad enough to encompass claims against such corporations; but, as we have seen, the language is not broad enough to cover such claims, however liberal an interpretation be placed upon it. And in this connection we are bound to give consideration to the fact that the language of R. S. 3490 was not amended to cover such claims when amendments were made in the language of R. S. 5438 to cover the making of fraudulent claims against government corporations. Not only is this true, but it is true also that, in subsequent legislation passed to protect government corporations against false and fraudulent claims, criminal penalties were specifically provided but no provision was made for civil penalties or forfeitures. See 18 USC 1010 and 1014. If it were the intent of Congress that presentation of false claims against such corporations be redressed by actions for civil penalties or forfeitures, it would have been easy enough to have so provided when the statutes were enacted providing the criminal penalties.* Such action by Congress would certainly be more logical and seemly than for the courts to give a forced interpretation to a statute passed three quarters of a century ago when government corporations had not been dreamed of.
>
> *"In such case, civil penalties would properly have been made recoverable by the corpora-

> tion, not by the United States. The fact that the forfeiture under R. S. 3490 must be recovered in a suit by the United States, and not by the government corporation to which the false claim has been presented, is an additional argument that false claims against such corporation are not comprehended by the statute."

The Eighth Circuit predicated its opinion in the instant case upon *United States ex rel Marcus* v. *Hess,* 317 U. S. 537, 87 L. Ed. 443. No corporation owned by the Government was involved in that case. The false claims were made against and paid from funds of Public Works Administration, which was a part of the Government of the United States. Obviously, therefore, the case came within the purview of R. S. 5438. This Court will not depreciate the holding in *Marcus* by reversing the court below in this case because patently Section 3490 does not include Government corporations. It would have been easy for Congress to have amended R. S. 3490 so as to include corporations owned by the Government if it had intended that redress for false claims presented to such corporation be by action under such statute rather than by a suit at the instance of and in the name of the corporation. The corporation may sue in its own name and if it has a cause of action based upon a fraudulent transaction it does not have to resort to R. S. 3490. It is apparent that before R. S. 3490 can be utilized as a basis for suit by Commodity Credit Corporation, Congress must so provide.

CONCLUSION

We respectfully insist, therefore, that Commodity Credit Corporation is a separate entity from the Government of the United States, and certainly is not a Department of the United States. Since R. S. 3490 is the basis for suits arising from false claims presented only to the Government of the United States or a Department thereof, and since Commodity Credit Corporation is neither, the judgment of the court below should be reversed.

Respectfully submitted,

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Office-Supreme Court, U.S.
FILED
MAR 1 3 1958
JOHN T. FEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 276

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, D/B/A R. S. RAINWATER & SONS, AND CITIZENS NATIONAL BANK, WALNUT RIDGE, ARKANSAS .... *Petitioners*

v.

UNITED STATES OF AMERICA .... *Respondent*

REPLY BRIEF FOR PETITIONERS

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ARKANSAS .... *Petitioners*

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UNITED STATES OF AMERICA .... *Respondent*

REPLY BRIEF

ARGUMENT

It is felt that certain points raised by the United States of America justify further discussion.

I

Marcus v. *Hess Decision*

In *United States ex rel Marcus* v. *Hess*, 317 U. S. 537, 87 L. Ed. 433, the Government had entered into a program of contributing to cost of local improvements. The procedure was for the contractors to submit their bids on the project to local authorities on official United States Government (P.W.A.) forms. Based upon these bids, contracts were entered into and moneys were placed by the Government into certain joint construction accounts together with the funds of the local sponsors. From these accounts payments to the contractors were made. The original bids in reliance upon which the Government made the deposits were collusive and false. This Court held that the collusive bids upon which the Government paid were subject to the *False Claim Act*, 31 U.S.C. 231, notwithstanding the fact they were initially made to the local sponsors and paid by them from the joint construction accounts. It stated that the existence of the intermediary of local sponsors did not constitute a bar to prosecution where the United States had paid on the strength of a false claim.

The Government argues inferentially that the Commodity Credit Corporation occupies the status of an intermediary in claims made upon the United States. Such a position is fallacious in that the basic requirement of both the *False Claims Act* and the *Hess* decision specifies that the United States Government must pay only if, as and when the false claim is made against it. As the Supreme Court said in *Hess*:

> "It was a prerequisite to respondents' payment by the local sponsors that these estimates be filed, transmitted to, and approved by, the P.W.A. authorities. Payment was then made from a joint construction bank account containing both federal and local funds. The work was done under constant federal supervision.
>
> "The government's money would never have been placed in the joint fund for payment to respondents had its agents known the bids were collusive. By their conduct, the respondents thus caused the government to pay claims of the local sponsors in order that they might in turn pay re-

spondents under contracts found to have been executed as the result of the fraudulent bidding."

Reliance upon the representation in question by the entity suing is the essence of a cause of action for fraud. In certain cases frauds are actionable although the actual representation was made to one other than the person who relied thereon and was damaged thereby, but the party defrauded must nevertheless show his reliance and damage. This essential requirement was adhered to in *Marcus* v. *Hess.* It is clearly absent here in the case of Commodity Credit Corporation vis-a-vis the United States.

Commodity is not an intermediary which receives claims and transmits them for reliance and payment by the United States. It adjusts, settles and pays claims against it autonomously. To the extent that the United States supplies funds to Commodity Credit Corporation it does so as capital or loans (15 U.S.C. 714(e), 714(b) (1)). These government expenditures have no causal connection with the filing of any of the claims which may be made upon Commodity Credit Corporation in connection with its extensive commercial activities. The Commodity Credit Corporation may make payment on the strength of the claims submitted to it, but with such claims the United States is not concerned.

The rule of construction laid down in *Marcus* v. *Hess, supra,* is aimed at the "discovery" and not the "direction" of legislative will. Such discovery reveals that:

1. Congress has clearly stated that Government corporations, such as Commodity Credit Corporation, were not included in R. S. 5438.

2. Congress intended to maintain the independent legal and financial status of its corporations and

particularly of the Commodity Credit Corporation, and not to equate that status with that of the United States. Congress has reiterated this intention subsequent to the decision in *Marcus* v. *Hess.*

II

Interpretation by Congress That Commodity Credit Corporation Is Not the United States or a Department Thereof

In dealing with Government corporations Congress has demonstrated a purpose that they occupy a legal and financial status independent of the Sovereign or any government agency, e. g., the P. W. A. in the *Hess* case. In implementing this purpose Congress was motivated by considerations of policy not applicable to ordinary agencies and with which this Court in *Hess* had no concern.

The Government corporation with an independent legal identity has always presented the problem of weighing the advantages of commercial flexibility which comes from financial autonomy against the need for control to protect the Government as a stockholder. Careful Congressional study of this problem resulted in the enactment of the *Corporation Control Act* of 1945 (31 U. S. C. 841, *et seq.*).

In this Act, Congress clearly rejected a solution of the problem based on assimilating these corporations to the financial status of the Sovereign. Considerations of desired commercial flexibility instead moved Congress to safeguard the Sovereign's rights as a stockholder to full and true reports and accountings from the corporations which it owned.

Indeed, in drafting the *Corporation Control Act*, much care was taken that the protective devices enacted not destroy the independent financial identity of the Government corporations, leaving only the legal entity, or, as the Government would now contend, a mere legal "shell". In this connection, the Senate Committee, recommending the *Corporation Control Act*, stated:

> "It is generally agreed that the corporate form loses much of its peculiar value without reasonable autonomy and flexibility in its day-to-day decisions and operations. The budget and financial controls imposed upon the Government corporations should not deprive them of this freedom and flexibility in carrying out authorized programs to a greater extent than is necessary to conform their operations to the program of the Government and the will of Congress." *Senate Report No.* 694, 79*th Congress, First Session* 1945, *page* 7.

The vital distinction intended by Congress between corporate instrumentalities and financially integrated agencies of the United States was epitomized in the enactment of "business" rather than "governmental" accounting procedures for the audit of the Government's interest in corporations. In describing these procedures the Senate Committee said:

> "In general, the purpose of the government type of audit is to determine the *validity* of expenditures under appropriations made by the Congress, in the light of restrictions and limitations placed by the Congress generally upon the expenditure of appropriated moneys.
>
> "In contrast, the commercial type of audit is separate and apart from the accounting system and internal financial control of the Corporation and is designed to determine the true financial condition of the Corporation as of a given date and the results of its financial operations during the period covered by the audit, as well as establishing whether the funds of the Corporation have been regularly expended in accordance with *corporate* authorization." *Senate Report No.* 694, 79*th Con-*

gress, First Session 1945, *page* 8 (emphasis supplied).

It is seen that in the case of an ordinary Government agency, the Sovereign has a direct and prime concern in establishing the truth and validity, of each and every claim presented to its financial officers. In the case of a Corporate financial entity, the Sovereign for reasons of policy foregoes that concern and is content to rely upon the accounting methods and business judgment of corporate management, checking those methods as an investor creditor or contributor only within an accepted corporate frame of reference.

In enacting the *Corporation Control Act of* 1945, *supra*, Congress was acutely aware of the possibility that certain corporate instrumentalities might no longer deserve or require independent financial status. It therefore made special provision that upon appropriate recommendation by the budget director, such corporations might become integrated financial instrumentalities of the United States but would neverthless retain *their legal corporate entity* (31 U.S.C. 852). While some question might conceivably arise as to the applicability of the *False Claims Act* to a corporation as to which such action had been taken, clearly no question could arise in the case of a corporation whose legal and financial identity had been as carefully preserved over the years as had that of Commodity Credit Corporation. In 1948 when Commodity Credit Corporation was reconstituted as a Federal corporation under the *Commodity Credit Corporation Charter Act* (15 U.S.C. 714 *et seq.*) the legal and financial status of the Commodity Credit Corporation was given careful review by the Congress. The new Act specifically preserved this authority of the corporation. That statute (15 U.S.C. 714(b) provided that the corporation:

(j) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid.

(k) Shall have authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers.

In explaining these provisions Congress made it abund-abundantly clear that its purpose was to preserve the commercial flexibility of Commodity Credit Corporation through financial autonomy:

> "Subsection (j) grants the Corporation the authority, essential to the effective conduct of its business as a corporate entity, to determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid. This is a common provision of Federal corporate charters. The Corporation, of course, will be subject to a commercial type of audit by the General Accounting Office under the provisions of the Government Corporation Control Act (31 U.S.C., 1940 ed., Supp. V, 850).
>
> "Subsection (k) explicitly vests in the Corporation the authority, implicit in subsection (j), to make final and conclusive settlement and adjustment of claims by or against the Corporation or the accounts of its fiscal officers. The power has been exercised by the Commodity Credit Corporation since its creation, and the power and its exercise were recognized by the Congress in the act of February 28, 1944 (15 U.S.C., 1940 ed., Supp. V, 713), * * *. *It was stated by the Congress in connection with the provisions of that act, that 'the Commodity Credit Corporation's fiscal responsibility is vested in the Corporation alone and not in the individual fiscal agents. In other words, the fiscal agents are responsible to the Corporation, which in turn is liable to the Federal Government*

> *for the Government's investment in the Corporation.* The examination of the individual accounts of particular fiscal agents with a view to external control and settlement would not facilitate a determination of the financial standing or progress of the Corporation as a whole. Such an examination would, as a matter of fact, seriously interfere with the Corporation's internal financial management and impair the flexibility which is the very basis of the Corporation's existence' (S. Rept. 631, 78th Cong., H. Rept. 846; 78th Cong.)." *H. Rep. No.* 1790, 80*th Congress Second Session, pp.* 11-12 (emphasis added).

At the time of the introduction of the *Commodity Credit Corporation Charter Act,* a specific section was included in the Senate bill, which would have identified the Commodity Credit Corporation as the Government of the United States and accorded it all the attributes of the Sovereign respecting the legal consequences of its commercial activities. The Senate Committee, in explaining its position in this regard, employed the contention now urged by the Government:

> "Subsection (c) provides that the Corporation shall have the rights, privileges, and immunities of the United States and may assert them in any suit, action, or proceeding. Since the Corporation is an agency of the United States which, in the final instance, will bear any losses suffered by the Corporation, it is desirable that the Corporation be clothed with the rights, privileges, and immunities of the sovereign. The section enumerates, but not by way of limitation, certain of the rights, priorities, and immunities of the United States which would, by virtue of this section, be enjoyed by the Corporation." *Senate Report,* No. 1022, 80*th Congress, Second Session,* p. 11.

This provision was specifically rejected by the House of Representatives which amended the subsection by deleting the all-inclusive grant of Sovereign rights to Commodity Credit Corporation and limiting these rights to priority in payment from decedents, insolvents and bankrupts. The Senate then acquiesced and the bill which was eventually adopted contained the House amendment (15 U.S.C. 714(e)). Congress therefore not only has granted the Commodity Credit Corporation the power in and of itself to determine and settle claims by and against it, but also has specifically refused to clothe the Corporation with the general attributes of the Sovereign in its exercise of that power. In view of such clear legislative intention, the Government's contention would require judicial legislation in its most offensive extreme.

III

Interpretation by Commodity Credit Corporation That It Is Not the United States or a Department Thereof

Indicative of the fact that Commodity Credit Corporation is not the United States or a department or officer thereof is that agency's administrative interpretation of its exemption from the requirements of 31 U.S.C. 203, the *Assignment of Claim Statute.* Section 203 prohibits all assignments and transfers of claim against the United States "unless they are freely made and executed in the presence of at least two attesting witnesses, *after the allowance of such a claim, the ascertainment of the amount due,* and *the issuing of a warrant for the payment thereof*" (emphasis supplied).

It is pertinent to observe that the assignments provided for Commodity Credit Corporation's 1956 Incentive Payment Program for Shorn Wool do not comply with the requirements of Section 203. We quote from 6 *Code of Federal Regulations* 472.720 (a) and (b) as follows:

> "*Assignments*—(a) *Form.* The producer may assign payments which may be determined to be due him under this program for the 1956 marketing year by filing with the ASC county office the original and two copies of CCC Wool Form 57, Assignment of Payment Under National Wool Act of 1954, duly executed by both parties. Such assignment shall be null and void unless it is freely made and (1) is executed by the producer in the presence of at least two attesting witnesses, neither of whom shall be an employee or agent of, or by consanguinity or marriage related to, the assignee; or (2) is acknowledged by the producer before a notary public, a member of the ASC county committee, the ASC county office manager, or a designated employee of such committee. In the case of a joint application for payment, an assignment shall be executed by all those who signed the application.
>
> (b) *Provisions* . . . CCC will make payment pursuant to an accepted assignment unless the ASC county office is furnished evidence of a mutual cancellation of the assignment by both parties thereto or unless the assignee releases the assignment, that is, asks the ASC county office in writing that payment be made to the assignor and not to the assignee."

It is seen that the wool program assignments do not require as conditions precedent the allowance of the claim, the ascertainment of the amount due and the issuance of a claim against the United States. Inasmuch as the requirements for the wool program assignments were established by Commodity Credit Corporation's own power to promulgate regulations (15 U.S.C. 714 b (d)), it is apparent that the requirements of 31 U.S.C. 203 were ignored because Commodity Credit Corporation considered that it was not the "United States" but rather a Federal corporation having an entity distinct from the United States Government. Such conclusion is in accord with *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation*, 3 F(2) 154, cer. den. 264 U. S. 586, 68 L. Ed. 862, *United States ex rel Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1, 72 L. Ed. 131; and Opinion No. 19, 40 *Op. Atty. Gen.* 84, 86.

If Commodity Credit Corporation is not the United States or a departnemt thereof within the meaning of 31 U. S. C. 203, logically and as a matter of proper statutory construction it cannot be, and is not, the United States or a department thereof within the meaning of 31 U. S. C. 231.

CONCLUSION

Because the Commodity Credit Corporation is not the United States of America or a department or officer thereof, we respectfully submit that the judgment of the Court of Appeals for the Eighth Circuit should be reversed.

Respectfully submitted,

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No. 276

In the Supreme Court of the United States

OCTOBER TERM, 1957

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, D/B/A R. S. RAINWATER & SONS, PETITIONERS

v.

UNITED STATES OF AMERICA

AND

CITIZENS NATIONAL BANK, WALNUT RIDGE, ARKANSAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioners seek review of a decision of the Court of Appeals for the Eighth Circuit sustaining the Government's complaint under the False Claims Act (31 U. S. C. 231) to recover liquidated damages for false claims made in connection with the obtaining of loans from Commodity Credit Corporation. In holding false claims against a wholly owned Government corporation within the coverage of the False Claims Act, the Eighth Circuit explicitly disagreed with the holding of the Court of Appeals for the Fourth Circuit in *McNinch* v. *United States*, 242 F. 2d 359, which ruled that the Act does not apply to such false claims.

The Government has filed a petition in *McNinch* setting out the reasons why it believes *McNinch* to be wrong and the holding here to be correct. See the petition in No. 146, this Term, at pp. 9–18. Since the importance of the question makes desirable the resolution of the conflict by this Court, we do not oppose the granting of this petition.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

AUGUST 1957.

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went on to state that during the period involved, R. S. Rainwater, Sr., was president of the Citizens National Bank and Sloan Rainwater, Jr., was its Assistant Cashier (R. 22). It was alleged that the Rainwaters presented the fourteen letters of transmittal, together with the ninety-eight notes secured by the ineligible cotton, to the bank, and that the bank, with full knowledge of the false nature of the transmittal letters and notes, and the ineligibility of the cotton, advanced full payment to the Rainwaters (R. 22). The bank was named as payee on each of the transmittal letters, and both the bank and the Rainwaters submitted these letters and notes to Commodity for payment (R. 23). The conduct of the bank, the complaint concluded, was a fraud upon the United States and a violation of the civil False Claims Act, and damages were sought in the amounts provided for in 31 U. S. C. 231 (R. 23).

3. *The Proceedings Below.*—Defendants in each action moved to dismiss on the grounds that the court lacked jurisdiction over the subject matter and that the complaints failed to state a claim upon which relief could be granted (R. 17, 24). In their memorandum brief in support of the latter motion, it was alleged, *inter alia,* that Commodity was not "the Government of the United States or any department or officer thereof" within the meaning of the civil False Claims Act; and that the actions could not be maintained since the Government suffered no monetary damage as the result of the alleged false claims. Following a consolidated hearing of both actions, the district court granted the motions to dismiss (R. 18,

25). The court's order, which was not accompanied by any explanatory memorandum, stated merely that it lacked jurisdiction over the subject matter and that the complaints failed to state a claim upon which relief could be granted (R. 18, 25).

On appeal, the Court of Appeals for the Eighth Circuit reversed (R. 26-37). The court confined its consideration to the two propositions upon which defendants relied to sustain the district court dismissals: that false claims submitted to Commodity Credit Corporation are not claims "against the Government of the United States or any department or officer thereof" within the meaning of the False Claims Act; and that relief may not be granted since there had been no specific allegation of damage in the complaints (R. 27). With respect to the first point—the sole question raised by petitioners (Pet. p. 2; Brief, p. 4)—the Court of Appeals held that claims against Commodity were within the purview of the Act (R. 30-35). In so holding, the court expressly rejected a contrary ruling of the Fourth Circuit in *McNinch, et al.* v. *United States*, 242 F. 2d 359, certiorari granted, 355 U. S. 808, No. 146, Oct. Term, 1957, now pending before this Court (R. 30). The Eighth Circuit, stressing this Court's decision in *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, declared that where the "ultimate source of payment of the fraudulent claims was the federal treasury * * * there can be no distinction between a government corporation or the government itself being defrauded" (R. 30-31). The Court of Appeals noted further the realistic approach taken by this Court in

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BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals (R. 26–35) is reported at 244 F. 2d 27. The orders of the District Court for the Eastern District of Arkansas dismissing the Government's complaints (R. 18, 25) are not reported.

JURISDICTION

The judgments of the Court of Appeals were entered on May 3, 1957 (R. 36, 37), and petition for a rehearing denied on June 17, 1957 (R. 37). A petition for a writ of certiorari was filed on July 15, 1957 and was granted on October 14, 1957 (355 U. S. 811). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether a claim against funds of the Commodity Credit Corporation—a wholly-owned Government corporation, operating within and as part of the Department of Agriculture, the funds of which are furnished and, if necessary, supplemented by Congress on an annual basis—is a "claim upon or against the Government of the United States, or any department or officer thereof", within the meaning of the civil False Claims Act.

STATUTE INVOLVED

The civil False Claims Act (12 Stat. 696, 698, R. S. 3490, 5438, 31 U. S. C. 231) provides in relevant part:

> Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, ac-

> count, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, * * * shall forfeit and pay to the United States the sum of $2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit.

STATEMENT

The United States brought two separate actions under the civil False Claims Act (R. S. 3490, 5438, 31 U. S. C. 231, *supra*, p. 2) against R. S. Rainwater Sr., et al., and the Citizens National Bank of Walnut Ridge, Arkansas, seeking recovery for fraudulent claims made or caused to be made by those parties against the Commodity Credit Corporation in connection with the 1949 Cotton Loan Program. Following a consolidation of both actions for purposes of a hearing, the district court, without stating its reasons, granted defendants' motions to dismiss for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief could be granted (R. 18, 25). The Court of Appeals for the Eighth Circuit, reversed and remanded both cases for trials on the merits (R. 26–37). The facts, as they appear from the relevant pleadings, and the proceedings below, may be summarized as follows:

1. *Rainwater.*—The Rainwaters were partners in R. S. Rainwater & Sons, a firm engaged in the business of operating cotton gins and purchasing and selling cotton for its own account in the State of Arkansas (R. 1–2). During the period involved in this action, R. S. Rainwater & Sons was an approved Lending Agency under the 1949 Cotton Loan Program of the Commodity Credit Corporation (R. 3). On June 30, 1949, Commodity issued 1949 Cotton Bulletin I (14 F. R. 3723) containing regulations for the 1949 Cotton Loan Program, under which program loans were to be made available to cotton producers on the 1949 crop produced by them, as authorized by Section 1 of the Agricultural Act of 1948, 62 Stat. 1247, 7 U. S. C. 1282, and the Commodity Credit Corporation Charter Act, 62 Stat. 1070, 15 U. S. C. 714 (R. 2). This Bulletin limited loans to be made under the program to actual producers (landowner, landlord, tenant, or sharecropper) on the security of their own cotton, owned by them at the time of the loan (R. 2).[1] Cotton bought from a producer was not eligible for use as security for a loan to the buyer (R. 2). The Bulletin required a producer desiring a loan on his cotton to tender a properly executed 1949 Cotton Producer's Note and Loan Agreement (Cotton Form A) which represented, *inter alia,* that the

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[1] Copies of Cotton Bulletin I; Form A, Cotton Producer's Note; Form D, Lending Agency Agreement; and Form C, Letter of Transmittal, were attached to the complaints as exhibits and are reproduced at R. 7–16.

maker had produced the cotton, and that he was eligible for a loan thereon in accordance with the terms of the Bulletin (R. 3). The Lending Agency Agreement between Commodity and R. S. Rainwater and Sons, authorizing the latter to make loans to producers of 1949 crop cotton, provided that loans were to be made to producers only, upon the tender of "duly executed" notes on the prescribed forms; that the date of each note was to be the date upon which the Lending Agency disbursed the loan proceeds to the producer; that disbursement was to be in the full amount stated in the note; and that the Lending Agency was not to make a loan on cotton known to it to be ineligible under the terms of 1949 Cotton Loan Bulletin I (R. 3). A note evidencing a loan was required to be tendered to Commodity within 15 days from the date of execution by means of a duly executed Lending Agency Letter of Transmittal (R. 3–4). The Letter of Transmittal contained certifications by the Lending Agency that the loans evidenced by the notes were made in good faith and in the belief that the cotton was eligible cotton as defined by the 1949 Bulletin; that the notes were not signed in blank and carried by the payee under collateral agreements which permitted the payee to retain the notes, date them at his discretion, and deliver them to Commodity; and that the full amounts of the notes were paid to the producers by the Lending Agency on the dates shown in the notes (R. 4). Commodity, in turn, was to pay to the Lending Agency the face value of the notes plus interest thereon at the rate of 1½ per cent per annum from the date of such notes to the date of payment by Commodity (R. 4).

The Government's complaint in *Rainwater,* after setting forth the foregoing, charged as follows: At various times during 1949 the Rainwaters purchased from producers, for their own account, 135 bales of the 1949 cotton crop (R. 4); at the time of making certain of these purchases, the Rainwaters requested the sellers to sign 1949 Cotton Producers Note and Loan Agreements and to leave those instruments with them (R. 5); the cotton notes thus obtained were undated and incomplete as to other details when delivered to the Rainwaters (R. 5). The complaint further alleged that the Rainwaters' purpose in obtaining the notes was to put themselves in a position where, if they were facing a loss on the purchased cotton because of a declining market or if they desired to recoup some of the money which they had invested, they could complete the notes and, as a Lending Agency, forward them to Commodity Credit Corporation and receive from Commodity the loan value of the cotton plus interest (R. 5). This plan was said to have been effectuated by subsequently dating the notes and filling in the necessary information at various times and presenting them or causing them to be presented to Commodity within 15 days of those dates and thereafter receiving from Commodity, for themselves, the established loan amounts plus interest (R. 5). In connection with the remainder of the 135 bales of cotton, the Rainwaters did not obtain notes from the sellers at the time of the sales; rather, thereafter, the Rainwaters contacted the sellers, persuaded them to sign notes for the previously sold cotton, and then, purporting to act as a Lending Agency, caused these notes to be forwarded to Commodity for payment of the loan value plus interest (R. 5). The 135 bales of cotton were listed as collateral upon ninety-eight notes, which notes, with their accompanying warehouse receipts, were transmitted to Commodity on fourteen Lending Agency Letters of Transmittal (R. 5).

The *Rainwater* complaint alleged that the previously described conduct constituted fraud upon the United States and violations of the civil False Claims Act (R. 6). It was averred that the Rainwaters knew that the cotton described in the notes was ineligible for pledging under the 1949 program and that the notes did not represent advances made to cotton producers in connection with loans under the program, in accordance with the Lending Agency Agreement obligations (R. 6). The complaint concluded that as a result of the Rainwaters' conduct Commodity accepted the notes and cotton collateral as representing valid transactions under the loan program and paid the amount of the notes with interest, whereas, if Commodity had known the true facts, it would have refused to accept the notes or pay anything thereon (R. 6). Judgment was sought for the amounts provided in 31 U. S. C. 231, *supra,* p. 2 (R. 6).

2. *Citizens National Bank.*—The complaint in the *Citizens National Bank* case set forth basically the same matters referred to above in the *Rainwater* proceedings (R. 18–23). The complaint against the bank

determining an identity with the Government, in comparable circumstances, of other corporate agencies and affirmed that, at least with respect to its funds, Commodity and the Government were indistinguishable (R. 32–35). As to the second proposition, the court below held that the complaints, which asked "for the amounts provided for in 31 U. S. C. 231", did contain allegations of damage, and that if no specific damages were proved the Government could still recover the forfeitures prescribed by the Act (R. 27–28). The Court of Appeals, accordingly, reversed the district court's dismissals and remanded the cases for trial (R. 35).

ARGUMENT

FRAUDULENT CLAIMS PRESENTED OR CAUSED TO BE PRESENTED TO COMMODITY CREDIT CORPORATION CONSTITUTE CLAIMS AGAINST THE "GOVERNMENT OF THE UNITED STATES" UNDER THE CIVIL FALSE CLAIMS ACT

The sole question which petitioners here raise is identical to the first question presented in *United States* v. *McNinch, et al., supra,* No. 146, now pending before the Court. The arguments set forth in Part I (pp. 19–44) of the Government's brief, in *McNinch* urging that fraudulent claims against Commodity Credit Corporation are within the purview of the civil False Claims Act, have equal application here and are, accordingly, incorporated by reference.[2] The remaining matters with which *McNinch* deals—those relating to claims against the Federal Housing

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[2] In its order allowing certiorari the Court directed that the present case be assigned for argument immediately following *McNinch* (R. 38).

Administration for credit insurance—have no bearing on the *Rainwater* proceedings.

CONCLUSION

For the reasons stated in Part I of the Government's brief in No. 146, it is respectfully submitted that the decision below should be affirmed.

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